

## **EXHIBIT 3**

Transcript of Amirali Y. Haidri, Esquire  
October 28, 2022

1 (1 to 4)

1	3
1 UNITED STATES DISTRICT COURT	1 A P P E A R A N C E S
2 EASTERN DISTRICT OF MICHIGAN	2 ON BEHALF OF PLAINTIFF/COUNTER-DEFENDANT:
3 SOUTHERN DIVISION	3 STANLEY H. KREMEN, ESQUIRE
4 - - - - - x	4 SHK-DPLC
5 TRUTEK CORP., :	5 4 Lenape Lane
6 Plaintiff/Counter-Defendant, :	6 East Brunswick, New Jersey 08816
7 v. : Case No.	7 (732) 593-7294
8 BLUEWILLOW BIOLOGICS, INC., : 2:21-cv-10312	8 shk@shk-dplc.com
9 Defendant/Counter-Plaintiff, :	9
10 ROBIN ROE 1 through 10 :	10 ON BEHALF OF DEFENDANT/COUNTER-PLAINTIFF:
11 (fictitious names); ABC :	11 LIANE M. PETERSON, ESQUIRE
12 CORPORATION 1 through 10 :	12 FOLEY & LARDNER LLP
13 (fictitious names), :	13 3000 K Street, NW
14 Defendants. :	14 Suite 600
15 - - - - - X	15 Washington, DC 20007
16	16 (202) 672-5300
17 Videotaped Deposition of	17 lpeterson@foley.com
18 AMIRALI Y. HAIDRI, ESQUIRE	18
19 Conducted Virtually	19
20 Friday, October 28, 2022	20 ALSO PRESENT:
21 10:08 a.m. EDT	21 JOHN PARKMAN, Video Specialist
22	22 JENNIFER POSIS, A/V Technician
23 Job No.: 468441	23 ASHOK WAHI
24 Pages 1 - 96	24
25 Reported by: Debra A. Whitehead	25
2	4
1 Videotaped Deposition of AMIRALI Y. HAIDRI,	1 C O N T E N T S
2 ESQUIRE, conducted virtually.	2 EXAMINATION OF AMIRALI Y. HAIDRI, ESQUIRE PAGE
3	3 By Ms. Peterson 6
4	4
5 Pursuant to notice, before Debra Ann Whitehead,	5 EXHIBITS MARKED IN TODAY'S SESSION
6 E-Notary Public in and for the State of Maryland.	6 (Attached to the Transcript)
7	7 DEPOSITION EXHIBIT PAGE
8	8 Exhibit 31 Deposition Notice 8
9	9 Exhibit 32 Curriculum Vitae, Amirali Y. 44
10	10 Haidri
11	11 Exhibit 33 Plaintiff's Expert Report of 67
12	12 Amirali Y. Haidri, Esq.,
13	13 Responsive to and in Rebuttal of
14	14 Defendant's Opening Expert Report
15	15 of Mansoor M. Amiji
16	16 Exhibit 34 Clinical Study Report, March 7, 86
17	17 2012
18	18
19	19 EXHIBITS MARKED IN PRIOR SESSIONS
20	20 (Not Attached)
21	21 DEPOSITION EXHIBIT PAGE
22	22 Exhibit 2 U.S. Patent No. 8,163,802 56
23	23
24	24
25	25

## Transcript of Amirali Y. Haidri, Esquire

2 (5 to 8)

October 28, 2022

<p style="text-align: right;">5</p> <p>1 PROCEEDINGS</p> <p>2 VIDEO SPECIALIST: Here begins Media</p> <p>3 Number 1 in the video-recorded deposition of</p> <p>4 Amirali Haidri in the matter of Trutek Corporation</p> <p>5 versus BlueWillow Biologics, Incorporated, et al.;</p> <p>6 in the United States District Court, Eastern</p> <p>7 District of Michigan, Southern Division; Case</p> <p>8 Number 2:21-cv-10312.</p> <p>9 Today's date is Friday, October 28, 2022.</p> <p>10 The time on the video monitor is now 10:08 a.m.</p> <p>11 eastern time. The remote videographer today is</p> <p>12 John Parkman, representing Planet Depos. All</p> <p>13 parties of this video deposition are attending</p> <p>14 remotely.</p> <p>15 Would counsel please voice-identify</p> <p>16 themselves and state whom they represent.</p> <p>17 MR. KREMEN: Stanley Kremen, representing</p> <p>18 the plaintiff Trutek Corporation.</p> <p>19 MS. PETERSON: Liane Peterson from Foley</p> <p>20 &amp; Lardner, LLP, representing the defendant</p> <p>21 BlueWillow Biologics.</p> <p>22 VIDEO SPECIALIST: The court reporter</p> <p>23 today is Debbie Whitehead, representing Planet</p> <p>24 Depos.</p> <p>25 Would the reporter please swear in the</p>	<p style="text-align: right;">7</p> <p>1 you, besides Mr. Kremen?</p> <p>2 A No, there isn't.</p> <p>3 Q Mr. Haidri, have you had your deposition</p> <p>4 taken before?</p> <p>5 A Yes, I have.</p> <p>6 Q How many times?</p> <p>7 A Once.</p> <p>8 Q And was your prior deposition, was that</p> <p>9 in the context of providing expert testimony or in</p> <p>10 some other capacity?</p> <p>11 A As a plaintiff.</p> <p>12 Q So you were the named plaintiff, and your</p> <p>13 deposition was taken in that capacity?</p> <p>14 A That is correct.</p> <p>15 Q Generally speaking, what was the subject</p> <p>16 matter of that case?</p> <p>17 A I was a victim of an automobile accident.</p> <p>18 That is what the matter was all about.</p> <p>19 Q Thank you.</p> <p>20 Well, I will just briefly go over some</p> <p>21 ground rules, particularly since we're doing this</p> <p>22 remotely, so that we can make sure that the</p> <p>23 deposition runs smoothly. Okay?</p> <p>24 A Yeah. Please go ahead.</p> <p>25 Q I'm going to ask that you wait until I</p>
<p style="text-align: right;">6</p> <p>1 witness.</p> <p>2 AMIRALI Y. HAIDRI, ESQUIRE,</p> <p>3 having been duly sworn, testified as follows:</p> <p>4 EXAMINATION BY COUNSEL FOR</p> <p>5 DEFENDANT/COUNTER-PLAINTIFF</p> <p>6 BY MS. PETERSON:</p> <p>7 Q Good morning.</p> <p>8 Could you please state your full name and</p> <p>9 address, for the record.</p> <p>10 A Amirali Y. Haidri. Residential address</p> <p>11 202 Hillside Avenue, Springfield, New Jersey,</p> <p>12 07081.</p> <p>13 Q Thank you. And my name is Liane</p> <p>14 Peterson. I am one of the lawyers who is</p> <p>15 representing the defendant BlueWillow Biologics in</p> <p>16 this case, and I'll be taking your deposition.</p> <p>17 It's nice to meet you.</p> <p>18 A Thank you. My pleasure.</p> <p>19 Q And, Mr. Haidri, where are you physically</p> <p>20 located today?</p> <p>21 A I am in the office of Stanley Kremen.</p> <p>22 Q And I know that Mr. Kremen is sitting</p> <p>23 there in the office with you. Right?</p> <p>24 A Yes.</p> <p>25 Q Is there anybody else in the room with</p>	<p style="text-align: right;">8</p> <p>1 finish with my questions before you start to</p> <p>2 respond, and I'll try to do the same when you are</p> <p>3 speaking. Okay?</p> <p>4 A Yes.</p> <p>5 Q I'm going to also ask that you provide</p> <p>6 verbal answers to my questions, rather than</p> <p>7 shaking your head or nodding or saying uh-huh.</p> <p>8 Is that okay?</p> <p>9 A Yes, that is okay.</p> <p>10 Q And if at any point you do not understand</p> <p>11 one of my questions or you need me to repeat the</p> <p>12 question, please just ask. Otherwise I will</p> <p>13 assume that you understood the question. Okay?</p> <p>14 A Okay, I'll ask if I need clarification.</p> <p>15 Q Mr. Haidri, are you aware of any reason</p> <p>16 why you would be unable to provide complete and</p> <p>17 truthful testimony during your deposition today?</p> <p>18 A No.</p> <p>19 MS. PETERSON: Let's mark as Exhibit 31</p> <p>20 the deposition notice of Mr. Haidri, please.</p> <p>21 (Exhibit 31 marked for identification and</p> <p>22 is attached to the transcript.)</p> <p>23 Q Mr. Haidri, do you recognize Exhibit 31?</p> <p>24 Have you seen it before?</p> <p>25 A I have not seen it before.</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Amirali Y. Haidri, Esquire

3 (9 to 12)

October 28, 2022

<p>9</p> <p>1 Q But you understand that you are appearing</p> <p>2 today for your deposition pursuant to a deposition</p> <p>3 notice that was served in the Trutek versus</p> <p>4 BlueWillow Biologics matter. Correct?</p> <p>5 <b>A That is what I have been informed of. I</b></p> <p>6 <b>have not seen this notice before.</b></p> <p>7 MS. PETERSON: We can take that down.</p> <p>8 Q Mr. Haidri, have you ever been retained</p> <p>9 to provide opinions as a testifying expert in the</p> <p>10 past four years?</p> <p>11 <b>A No, I have not.</b></p> <p>12 Q Have you ever been retained to provide</p> <p>13 opinions as a testifying expert at any time?</p> <p>14 <b>A No, I have not.</b></p> <p>15 Q Have you ever prepared any type of expert</p> <p>16 report or declaration for any type of contested</p> <p>17 proceeding?</p> <p>18 <b>A Well, not really a contested proceeding,</b></p> <p>19 <b>but I'm a member of certain committees where issue</b></p> <p>20 <b>joint opinions, and I have signed on on those,</b></p> <p>21 <b>onto those opinions.</b></p> <p>22 Q So that would be opinions that were</p> <p>23 issued for I guess certain bar-related committees</p> <p>24 that you're a member of?</p> <p>25 <b>A That is correct.</b></p>	<p>11</p> <p>1 <b>A No, I have not been.</b></p> <p>2 Q So just the Matrixx Initiatives matter</p> <p>3 and the commercial litigation matter involving</p> <p>4 breach of contract, those are the only two times</p> <p>5 you've been retained by Trutek?</p> <p>6 <b>A That is correct, as of today.</b></p> <p>7 Q When was the commercial litigation matter</p> <p>8 filed?</p> <p>9 <b>A As best as I recall it, it was in April</b></p> <p>10 <b>2021.</b></p> <p>11 Q And what court was that filed in?</p> <p>12 <b>A Superior Court of New Jersey, Somerset</b></p> <p>13 <b>County.</b></p> <p>14 Q And who was the other party?</p> <p>15 <b>A Their name is Jintec America, Inc.</b></p> <p>16 Q And what products were involved in that</p> <p>17 case?</p> <p>18 <b>A It was a case of sales of the NasalGuard</b></p> <p>19 <b>product that Jintec was contractually obligated to</b></p> <p>20 <b>buy and pay for.</b></p> <p>21 Q And what was Jintec, Incorporated's, role</p> <p>22 with respect to the sales of NasalGuard?</p> <p>23 <b>A Can you please repeat that? I can't</b></p> <p>24 <b>understand your question.</b></p> <p>25 Q What was -- the other party --</p>
<p>10</p> <p>1 Q Mr. Haidri, have you ever been retained</p> <p>2 by Trutek to provide either testifying or</p> <p>3 consulting expert services on any other matter?</p> <p>4 <b>A No, I have not.</b></p> <p>5 Q Have you ever been retained by</p> <p>6 Trutek's -- I'm sorry, let me start that over</p> <p>7 again.</p> <p>8 Have you ever been retained by Trutek</p> <p>9 previously in any context?</p> <p>10 <b>A I have been.</b></p> <p>11 Q Can you explain, please.</p> <p>12 <b>A I was the local counsel in a certain</b></p> <p>13 <b>federal court matter against a corporation called</b></p> <p>14 <b>Matrixx Initiatives.</b></p> <p>15 Q Apart from the federal court matter</p> <p>16 against Matrixx Initiatives, have you ever been</p> <p>17 retained by Trutek in any other context?</p> <p>18 <b>A I have been.</b></p> <p>19 Q What other times have you been retained</p> <p>20 by Trutek?</p> <p>21 <b>A In a commercial litigation matter</b></p> <p>22 <b>involving a breach of contract.</b></p> <p>23 (Clarification by the court reporter.)</p> <p>24 Q Are there any other instances when you've</p> <p>25 been retained by Trutek?</p>	<p>12</p> <p>1 <b>A The defendant. Okay?</b></p> <p>2 Q Okay. They were the defendant. And what</p> <p>3 was their involvement with NasalGuard?</p> <p>4 <b>A They entered into two different contracts</b></p> <p>5 <b>for foreign markets, and they were obligated to</b></p> <p>6 <b>place certain orders according to the contract.</b></p> <p>7 <b>And with one particular territory they failed to</b></p> <p>8 <b>place the order. And with respect to another</b></p> <p>9 <b>territory, they placed an order but did not follow</b></p> <p>10 <b>up with the necessary payment for the</b></p> <p>11 <b>manufactured -- manufacturing of the goods</b></p> <p>12 <b>involved to take place.</b></p> <p>13 <b>And -- okay.</b></p> <p>14 Q And is it correct that the contracts were</p> <p>15 for purchasing NasalGuard outside of the United</p> <p>16 States?</p> <p>17 <b>A That is correct, for foreign markets.</b></p> <p>18 Q Is that litigation still pending?</p> <p>19 <b>A It is pending.</b></p> <p>20 Q I'd like to talk about the other matter</p> <p>21 you identified, the matter involving Matrixx</p> <p>22 Initiatives.</p> <p>23 That matter was filed in the District</p> <p>24 Court of New Jersey. Correct?</p> <p>25 <b>A That is correct.</b></p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

October 28, 2022

<p>13</p> <p>1 Q And that case against Matrixx involved</p> <p>2 Trutek's claims of infringement of the '802</p> <p>3 patent. Correct?</p> <p>4 A <b>It is correct, yes.</b></p> <p>5 Q And that's the same '802 patent that's</p> <p>6 being asserted by Trutek in this matter against</p> <p>7 BlueWillow Biologics. Right?</p> <p>8 A <b>That is my understanding.</b></p> <p>9 Q What was your role in representing Trutek</p> <p>10 in the New Jersey litigation against Matrixx?</p> <p>11 A <b>I was the local counsel for Trutek.</b></p> <p>12 Q And what did you do in that role?</p> <p>13 A <b>I filed a complaint and served motions,</b></p> <p>14 <b>pleadings, and appearances.</b></p> <p>15 Q Anything else?</p> <p>16 A <b>Settlement -- mediation conference.</b></p> <p>17 Q So you also participated in a settlement</p> <p>18 or a mediation conference with Matrixx?</p> <p>19 Is that what you said?</p> <p>20 A <b>Yeah, I did participate in the mediation.</b></p> <p>21 Q And was that one mediation conference</p> <p>22 that you participated in, or were there multiple?</p> <p>23 A <b>Only one.</b></p> <p>24 Q Did you participate in any other</p> <p>25 discussions concerning settlement over the course</p>	<p>15</p> <p>1 A <b>No; I was the only counsel. And then I</b></p> <p>2 <b>filed a motion for Mr. Kremen to be waived in as</b></p> <p>3 <b>pro hac vice counsel.</b></p> <p>4 Q And Mr. Kremen was not admitted pro hac</p> <p>5 to the New Jersey Matrixx matter until about nine</p> <p>6 months after the litigation was filed. Right?</p> <p>7 A <b>Probably. Sounds right.</b></p> <p>8 Q So for the first nine months of the</p> <p>9 litigation, you were Trutek's only attorney</p> <p>10 representing it in the matter?</p> <p>11 A <b>Yeah, I was the only attorney of record.</b></p> <p>12 Q Do you know why you were retained by</p> <p>13 Trutek for the Matrixx litigation?</p> <p>14 MR. KREMEN: Objection to form.</p> <p>15 A <b>It's because I'm an attorney admitted in</b></p> <p>16 <b>the State of New Jersey, and as a registered</b></p> <p>17 <b>patent attorney in the bar again.</b></p> <p>18 Q Did you know Mr. Kremen before filing the</p> <p>19 litigation against Matrixx?</p> <p>20 A <b>I certainly did.</b></p> <p>21 Q In what context?</p> <p>22 A <b>I was -- I was and still am a Master in</b></p> <p>23 <b>the John C. Lifland American Inn of Court, and</b></p> <p>24 <b>Mr. Kremen had joined a year or two before me.</b></p> <p>25 <b>And that's how we met each other.</b></p>
<p>14</p> <p>1 of your representation of Trutek in the Matrixx</p> <p>2 matter?</p> <p>3 A <b>Beyond the mediation, I do not recall</b></p> <p>4 <b>anything.</b></p> <p>5 Q And I understand that Mr. Kremen was also</p> <p>6 counsel representing Trutek in that Matrixx</p> <p>7 litigation.</p> <p>8 Is that correct?</p> <p>9 A <b>That is correct, he was my pro hac vice</b></p> <p>10 <b>counsel and, in fact, lead counsel.</b></p> <p>11 Q Approximately how long did the Matrixx</p> <p>12 litigation last?</p> <p>13 A <b>As best as I can recall, it has been</b></p> <p>14 <b>close for a year or two.</b></p> <p>15 Q But do you --</p> <p>16 A <b>A year and a half is what I would say was</b></p> <p>17 <b>the length of it.</b></p> <p>18 Q And do you recall when the litigation</p> <p>19 against Matrixx was filed?</p> <p>20 A <b>Well, if I recollect -- I can't really</b></p> <p>21 <b>say that I recall for certain -- it would be about</b></p> <p>22 <b>three to three-and-a-half years before now.</b></p> <p>23 Q Was Mr. Kremen the lead counsel for</p> <p>24 Trutek when the complaint was first filed against</p> <p>25 Matrixx?</p>	<p>16</p> <p>1 Q And did you know Mr. Wahi or anybody at</p> <p>2 Trutek before you were retained by them to file</p> <p>3 the litigation matter against Matrixx?</p> <p>4 A <b>I'm not sure what you mean by whether I</b></p> <p>5 <b>knew Mr. Wahi. In what context?</b></p> <p>6 <b>Can you please clarify?</b></p> <p>7 Q Had you ever met Mr. Wahi before filing</p> <p>8 the case against Matrixx?</p> <p>9 A <b>Obviously I met with him so that he could</b></p> <p>10 <b>instruct me to file the complaint.</b></p> <p>11 Q Yeah, of course.</p> <p>12 When were you first contacted by Mr. Wahi</p> <p>13 to discuss filing a complaint against Matrixx?</p> <p>14 A <b>Let's say, if I go by my memory, if the</b></p> <p>15 <b>complaint was filed three-and-a-half years ago,</b></p> <p>16 <b>then I probably met Mr. Wahi a couple of months</b></p> <p>17 <b>before then to discuss what he wanted me to do.</b></p> <p>18 Q So prior to the time that Mr. Wahi</p> <p>19 contacted you to discuss the potential litigation</p> <p>20 against Matrixx, you had never met him before?</p> <p>21 A <b>No, I had not.</b></p> <p>22 Q So just to confirm, it was Mr. Wahi who</p> <p>23 contacted you about filing the case against</p> <p>24 Matrixx, and not Mr. Kremen?</p> <p>25 A <b>Actually, it's not as simple as that.</b></p>

October 28, 2022

<p>17</p> <p>1 <b>Mr. Kremen introduced me to Mr. Wahi.</b></p> <p>2 Q And then after Mr. Kremen introduced you</p> <p>3 to Mr. Wahi, you had some meetings or discussions</p> <p>4 with Mr. Wahi to discuss the potential litigation</p> <p>5 matter against Matrixx.</p> <p>6 Is that right?</p> <p>7 <b>A That is correct.</b></p> <p>8 Q Okay. So would it be fair to say then</p> <p>9 that during the course of your representation of</p> <p>10 Trutek in the Matrixx matter, you did communicate</p> <p>11 directly with Mr. Wahi of Trutek?</p> <p>12 <b>A And his office, Trutek Corporation, yes.</b></p> <p>13 Q Who else did you communicate with at</p> <p>14 Trutek in connection with the Matrixx litigation</p> <p>15 matter?</p> <p>16 <b>A The president of Trutek and another</b></p> <p>17 <b>vice-president.</b></p> <p>18 Q Do you recall their names?</p> <p>19 <b>A I do.</b></p> <p>20 Q What are their names?</p> <p>21 <b>A The president is called Shaheda Ashtekar.</b></p> <p>22 Q And then who was the other vice-president</p> <p>23 that you communicated with in connection with the</p> <p>24 Matrixx litigation matter?</p> <p>25 <b>A Kanika Wahi.</b></p>	<p>19</p> <p>1 that role?</p> <p>2 <b>A I'm sure she was. I'm not aware of what</b></p> <p>3 <b>exactly her responsibilities.</b></p> <p>4 Q Do you know, like, was she a</p> <p>5 vice-president in charge of some particular</p> <p>6 operation of Trutek?</p> <p>7 <b>A I'd rather not guess. But she was</b></p> <p>8 <b>vice-president, that's all I can say.</b></p> <p>9 Q Okay.</p> <p>10 <b>A Still is, as a matter of fact.</b></p> <p>11 Q Now, during the course of your</p> <p>12 representation of Trutek in the Matrixx matter,</p> <p>13 did you also communicate directly with opposing</p> <p>14 counsel representing Matrixx?</p> <p>15 <b>A I did.</b></p> <p>16 Q And you understand that Matrixx also</p> <p>17 filed a petition for inter partes review at the</p> <p>18 Patent and Trademark Office with respect to the</p> <p>19 '802 patent. Right?</p> <p>20 <b>A That is what I'm told. I don't know</b></p> <p>21 <b>anything more about it.</b></p> <p>22 Q Did you have any role or did you</p> <p>23 participate at all in that IPR proceeding</p> <p>24 involving the '802 patent?</p> <p>25 <b>A No, I was not involved.</b></p>
<p>18</p> <p>1 Q What was the first name?</p> <p>2 <b>A Kanika.</b></p> <p>3 Q Kanika?</p> <p>4 <b>A Do you want me to spell it?</b></p> <p>5 Q Sure.</p> <p>6 <b>A K for Kenneth, A for apple, N for Nancy,</b></p> <p>7 <b>I for Irene, K for Kenneth, A for apple.</b></p> <p>8 Q Is that Mr. Wahi's daughter?</p> <p>9 <b>A That's what I'm told.</b></p> <p>10 Q Could you spell the name of the President</p> <p>11 of Trutek that you identified earlier?</p> <p>12 <b>A Indeed I will. S for Sam, H for Harry, A</b></p> <p>13 <b>for apple, H for Harry, I for Irene, D for dog, A</b></p> <p>14 <b>for apple. Shaheda.</b></p> <p>15 Q And that's his first name or last name?</p> <p>16 <b>A It's her first name.</b></p> <p>17 Q Her first name. Okay. What is her last</p> <p>18 name?</p> <p>19 <b>A Ashtekar.</b></p> <p>20 Q Ashtekar?</p> <p>21 <b>A Ashtekar, yes.</b></p> <p>22 Q Okay. Thank you.</p> <p>23 Now, with respect to Ms. Wahi, do you</p> <p>24 know what she was vice-president of? Did she have</p> <p>25 a -- was she responsible for certain things in</p>	<p>20</p> <p>1 Q At the time of the Matrixx litigation,</p> <p>2 did you review or -- did you review the petition</p> <p>3 for the IPR?</p> <p>4 <b>A I believe I saw it. I can't recall</b></p> <p>5 <b>exactly anything about it.</b></p> <p>6 Q Were you asked by anyone to review the</p> <p>7 petition and provide your analysis of the</p> <p>8 petition?</p> <p>9 <b>A No, I was not.</b></p> <p>10 Q During the nine-month period after the</p> <p>11 Matrixx litigation was filed, before Mr. Kremen</p> <p>12 entered an appearance, what was your</p> <p>13 responsibility for handling the litigation matter</p> <p>14 for Trutek?</p> <p>15 <b>A Well, I was the counsel.</b></p> <p>16 <b>That's all I can say.</b></p> <p>17 Q So would it be fair to say that you were</p> <p>18 responsible for running that litigation and</p> <p>19 overseeing all aspects of the litigation during</p> <p>20 that time period?</p> <p>21 <b>A Doing what I needed to do with the court</b></p> <p>22 <b>and opposing counsel.</b></p> <p>23 Q And you understand that Matrixx raised</p> <p>24 several allegations of invalidity of the '802</p> <p>25 patent in that litigation pending in New Jersey.</p>

October 28, 2022

<p>21</p> <p>1 Correct?</p> <p>2 <b>A Well, they have the usual defenses any</b></p> <p>3 <b>infringer raises.</b></p> <p>4 Q And so you were responsible for assessing</p> <p>5 those defenses and considering responses to them.</p> <p>6 Right?</p> <p>7 <b>A I have to, yes.</b></p> <p>8 Q Approximately how much time do you think</p> <p>9 you devoted to handling the Trutek litigation</p> <p>10 matter pending in New Jersey over that</p> <p>11 year-and-a-half period?</p> <p>12 <b>A I can't give you an exact estimate. It</b></p> <p>13 <b>would be hundreds of hours, I'm sure.</b></p> <p>14 Q And over the course of representing</p> <p>15 Trutek in the Matrixx litigation, did you review</p> <p>16 the '802 patent?</p> <p>17 <b>A Yes, I reviewed it a few times.</b></p> <p>18 Q And did you consider the disclosure of</p> <p>19 the '802 patent?</p> <p>20 <b>A I have seen it, yes.</b></p> <p>21 Q And I'm asking specifically, did you</p> <p>22 consider or review the disclosure of the '802</p> <p>23 patent in the context of your work in representing</p> <p>24 Trutek in the Matrixx litigation matter?</p> <p>25 <b>A Broadly speaking, yes.</b></p>	<p>23</p> <p>1 <b>A I certainly considered it to be valid, if</b></p> <p>2 <b>that is your question.</b></p> <p>3 Q Did you assess the validity of the '802</p> <p>4 patent in response to invalidity defenses raised</p> <p>5 by Matrixx --</p> <p>6 MR. KREMEN: Objection. Form.</p> <p>7 Q -- while representing Trutek?</p> <p>8 MR. KREMEN: I'm sorry. Objection to</p> <p>9 form.</p> <p>10 <b>A And I didn't quite understand. That was</b></p> <p>11 <b>a long question.</b></p> <p>12 Q Well, I'll try to rephrase the question</p> <p>13 and get it all out at once.</p> <p>14 <b>A Okay.</b></p> <p>15 Q While representing Trutek in the Matrixx</p> <p>16 litigation matter, did you assess the validity of</p> <p>17 the '802 patent in response to the invalidity</p> <p>18 defenses raised by Matrixx?</p> <p>19 <b>A Yes, I did.</b></p> <p>20 Q So would it be fair to say that over the</p> <p>21 course of representing Trutek in the Matrixx</p> <p>22 litigation, you obtained an understanding of the</p> <p>23 '802 patent and the prior art?</p> <p>24 <b>A Yes.</b></p> <p>25 Q And your experience in representing</p>
<p>22</p> <p>1 Q And did you assess the claim scope of the</p> <p>2 '802 patent over the course of your representation</p> <p>3 of Trutek in the Matrixx litigation matter?</p> <p>4 <b>A Will you please repeat that question?</b></p> <p>5 Q Did you assess the claim scope of the</p> <p>6 '802 patent over the course of representing Trutek</p> <p>7 in the Matrixx litigation matter?</p> <p>8 <b>A Yes, I did.</b></p> <p>9 Q Did you assess Trutek's claims of</p> <p>10 infringement of the '802 patent over the course of</p> <p>11 representing Trutek in the Matrixx litigation</p> <p>12 matter?</p> <p>13 <b>A Yes.</b></p> <p>14 Q Did you assess claim construction of the</p> <p>15 '802 patent in the course of representing Trutek</p> <p>16 in the Matrixx litigation matter?</p> <p>17 <b>A Informally, yes.</b></p> <p>18 Q And when you say "informally," that's</p> <p>19 because the court never conducted formal Markman</p> <p>20 proceedings in the Matrixx matter.</p> <p>21 Is that correct?</p> <p>22 <b>A There was no Markman hearing.</b></p> <p>23 Q And did you assess the validity of the</p> <p>24 '802 patent in the course of representing Trutek</p> <p>25 in the Matrixx litigation matter?</p>	<p>24</p> <p>1 Trutek in the Matrixx litigation informed your</p> <p>2 understanding of the '802 patent and the prior</p> <p>3 art. Right?</p> <p>4 <b>A That is correct.</b></p> <p>5 Q Did you draw on what you learned while</p> <p>6 representing Trutek in the Matrixx litigation when</p> <p>7 forming your expert opinions that you prepared for</p> <p>8 the present litigation?</p> <p>9 <b>A Yeah, somewhat.</b></p> <p>10 Q In what context, or how did they inform</p> <p>11 your opinions?</p> <p>12 <b>A Well, I was aware of the art cited</b></p> <p>13 <b>against the '802 patent, the one and only office</b></p> <p>14 <b>action there was, and what the patent as granted</b></p> <p>15 <b>truly stands for.</b></p> <p>16 Q And when you say what the patent as</p> <p>17 granted stands for, you're talking about the</p> <p>18 disclosure of the patent and the invention claimed</p> <p>19 in the patent. Correct?</p> <p>20 <b>A Yes, that is true.</b></p> <p>21 Q And your understanding of the disclosure</p> <p>22 of the '802 patent and the invention claimed in</p> <p>23 the '802 patent, did that come from discussions</p> <p>24 with Mr. Wahi or anybody at Trutek?</p> <p>25 <b>A Not really. I just studied the papers</b></p>

October 28, 2022

<p>25</p> <p>1 connected with the patent and what led to it.</p> <p>2 Q Did you ever discuss with Mr. Wahi over</p> <p>3 the course of representing Trutek in the Matrixx</p> <p>4 litigation his view of the '802 patent and what it</p> <p>5 discloses and what it claims?</p> <p>6 A No, I did not.</p> <p>7 Q Did you discuss with Mr. Kremen while</p> <p>8 representing Trutek in the Matrixx litigation the</p> <p>9 disclosure of the '802 patent --</p> <p>10 A Yes.</p> <p>11 Q -- and what it claims?</p> <p>12 A Yes.</p> <p>13 Q Did you discuss with Mr. Kremen while</p> <p>14 representing Trutek in the Matrixx litigation any</p> <p>15 issues addressed to the invalidity challenges to</p> <p>16 the '802 patent?</p> <p>17 A I don't recall. I don't think I did.</p> <p>18 Q In your meetings with Mr. Wahi leading up</p> <p>19 to the filing of the Matrixx litigation, did</p> <p>20 Mr. Wahi provide you any information about his</p> <p>21 view of the '802 patent?</p> <p>22 A No, I don't think so.</p> <p>23 Q Have you ever been retained by Mr. Kremen</p> <p>24 previously on any other matter?</p> <p>25 A Well, we jointly represented a certain</p>	<p>27</p> <p>1 A The first one would have been over about</p> <p>2 a couple of years ago. Second one just came to an</p> <p>3 end within this month.</p> <p>4 Q And those two litigation matters, you</p> <p>5 said the name of the plaintiff that you</p> <p>6 represented was William Araujo. Right?</p> <p>7 A Araujo, right.</p> <p>8 Q Was he the inventor on the patent?</p> <p>9 A He was.</p> <p>10 Q Other than those two litigation matters</p> <p>11 representing Mr. Araujo, have you ever jointly</p> <p>12 represented a party in litigation with Mr. Kremen?</p> <p>13 A Well, there was a trademark infringement</p> <p>14 matter where he was a consultant with me, but not</p> <p>15 an attorney of record.</p> <p>16 Q Okay. Anything else?</p> <p>17 A No, nothing else.</p> <p>18 Q And what about Mr. Keith Altman; have you</p> <p>19 ever worked with Mr. Altman on any litigation</p> <p>20 matters before this one?</p> <p>21 A Never met him.</p> <p>22 Q And apart from the Trutek matter filed</p> <p>23 against Matrixx, the present Trutek matter filed</p> <p>24 against BlueWillow Biologics, and the</p> <p>25 breach-of-contract action that you identified,</p>
<p>26</p> <p>1 plaintiff in a patent case.</p> <p>2 Q That's a different patent case not</p> <p>3 involving Trutek?</p> <p>4 A Nothing to do with Trutek.</p> <p>5 Q And that was a litigation matter?</p> <p>6 A Two of them. They were both litigation</p> <p>7 matters.</p> <p>8 Q And who was the party that you jointly</p> <p>9 represented with Mr. Kremen?</p> <p>10 A You mean the name of the plaintiff?</p> <p>11 Q Yes.</p> <p>12 A William Araujo.</p> <p>13 Q Can you spell that last name?</p> <p>14 A A-R-A-U-J-O.</p> <p>15 Q Was that a patent infringement matter?</p> <p>16 A Yes, there were.</p> <p>17 Q When were those filed?</p> <p>18 A One was filed in the District of New</p> <p>19 Jersey.</p> <p>20 Q Okay. Where was the other filed?</p> <p>21 A Southern District of New York.</p> <p>22 Q And when were those two litigations</p> <p>23 filed?</p> <p>24 A Time frame?</p> <p>25 Q Yes.</p>	<p>28</p> <p>1 have you ever been retained by Trutek on any other</p> <p>2 matter?</p> <p>3 A No, I don't think so. In fact, I have</p> <p>4 not been.</p> <p>5 Q I'd like to focus now on your retention</p> <p>6 for this particular matter involving BlueWillow</p> <p>7 Biologics. Okay?</p> <p>8 A Okay, I'm listening.</p> <p>9 Q When were you retained as an expert in</p> <p>10 this matter?</p> <p>11 A It will be about three or four months</p> <p>12 ago.</p> <p>13 Q And who were you retained by?</p> <p>14 A By Mr. Kremen.</p> <p>15 Q And what did Mr. Kremen explain to you</p> <p>16 about what you were going to be requested to do?</p> <p>17 A Well, he explained that I had to provide</p> <p>18 a report defending the validity of the '802</p> <p>19 patent.</p> <p>20 Q Did Mr. Kremen provide you with any</p> <p>21 materials that he asked you to consider in forming</p> <p>22 your opinions regarding the validity of the '802</p> <p>23 patent?</p> <p>24 A Yeah, I received some materials.</p> <p>25 Q What did you receive?</p>

October 28, 2022

<p>29</p> <p>1 <b>A A report from Dr. Amiji and prosecution</b>  2 <b>history of the '802 patent, other prior</b>  3 <b>publications that may have some relevance.</b>  4 Q Can you identify those prior publications  5 for me?  6 <b>A As best as I recall, there are two</b>  7 <b>patents of some -- that have been mentioned a few</b>  8 <b>times, called Wadstrom and Rolf. And they are</b>  9 <b>not, in fact, patents, but they are publications.</b>  10 Q And do you recall any other materials  11 that Mr. Kremen provided you with in connection  12 with forming your opinions regarding the validity  13 of the '802 patent?  14 <b>A Many other materials. Names I recall are</b>  15 <b>Baker and Khaled.</b>  16 Q So basically that's the prior art that's  17 addressed in your report. Right?  18 <b>A If you want to call it prior art, that's</b>  19 <b>what it is.</b>  20 Q Did Mr. Kremen provide you any other  21 materials or documents or information that you  22 used to form your opinions that are not  23 specifically identified in your report?  24 <b>A No, I can't say he did.</b>  25 Q Mr. Haidri, do you intend to testify at</p>	<p>31</p> <p>1 matter involving BlueWillow Biologics?  2 <b>A No, I have not.</b>  3 Q So you have not had any conversations  4 with Mr. Wahi since you have been retained as an  5 expert in this matter?  6 <b>A Well, that's not so simple to answer.</b>  7 <b>But, no, in this context, I have not spoken to</b>  8 <b>Mr. Wahi. I have the other litigation pending,</b>  9 <b>therefore I will speak to him regularly.</b>  10 Q That would be the breach-of-contract  11 litigation?  12 <b>A That is correct.</b>  13 Q Did you speak with anybody else at Trutek  14 since -- strike that.  15 Did you speak with anybody else at Trutek  16 in connection with forming your opinions on the  17 BlueWillow Biologics matter after being retained?  18 <b>A No.</b>  19 Q Did Mr. Wahi or anybody else at Trutek  20 provide you with any information that you used to  21 form your opinions in this matter?  22 <b>A No.</b>  23 Q Did you rely on any information provided  24 by Mr. Wahi during the earlier litigation when  25 forming your opinions on the BlueWillow Biologics</p>
<p>30</p> <p>1 the trial if it occurs in this matter?  2 <b>A Well, it will be up to the parties and</b>  3 <b>Mr. -- if I'm asked, I will testify, yes. I</b>  4 <b>haven't been asked.</b>  5 Q And will you be -- if you are asked to  6 testify at the trial if one occurs, will you be  7 compensated for your testimony?  8 <b>A I would expect that that's the usual</b>  9 <b>thing in litigation.</b>  10 Q And what rate will you be compensated at  11 for your testimony at trial?  12 <b>A Well, it depends on when the trial takes</b>  13 <b>place. But my billing rate at present is \$350 an</b>  14 <b>hour.</b>  15 Q And that's the rate that you have billed  16 Trutek for the work that you have conducted in  17 this matter filed against BlueWillow?  18 <b>A That is right.</b>  19 Q How many hours have you spent on this  20 matter involving BlueWillow in preparing your  21 opinions?  22 <b>A I don't have my billing sheet before me,</b>  23 <b>but my best estimate is it's 40 to 50 hours.</b>  24 Q Did you speak with anybody other than  25 Mr. Kremen in connection with your work on this</p>	<p>32</p> <p>1 matter?  2 <b>A I'm not sure I understand your question,</b>  3 <b>but I think -- I think the answer is no.</b>  4 Q I can rephrase that.  5 Did you receive any information or any  6 documents from Mr. Wahi at any time that you used  7 or considered when forming your opinions in the  8 BlueWillow Biologics matter?  9 <b>A Then I stand with my answer. The answer</b>  10 <b>is no.</b>  11 Q Did you receive any information or any  12 documents from anybody at Trutek at any time that  13 you used or considered when forming your opinions  14 in the BlueWillow Biologics matter?  15 <b>A No.</b>  16 Q Now, over the entire course of your  17 representation of Trutek, how many times do you  18 think you've spoken to Mr. Wahi?  19 <b>A Dozens of times, in various different</b>  20 <b>context, not just the -- not just the Matrixx</b>  21 <b>matter or the breach-of-contract matter.</b>  22 Q How many times do you think you spoke to  23 Mr. Wahi in connection with one of the matters  24 involving the '802 patent?  25 <b>A How many times I cannot possibly recall.</b></p>

October 28, 2022

<p>33</p> <p>1 <b>Must be dozens of times.</b></p> <p>2 Q And did any of those conversations relate</p> <p>3 to prior art asserted against the '802 patent?</p> <p>4 <b>A I don't think so. I cannot recall that.</b></p> <p>5 Q I'm sorry. Is your answer that you don't</p> <p>6 remember or that you don't believe so?</p> <p>7 <b>A I don't believe so.</b></p> <p>8 Q Did any of your dozens of conversations</p> <p>9 with Mr. Wahi relate to the disclosure of the '802</p> <p>10 patent?</p> <p>11 MR. KREMEN: Objection to the form of the</p> <p>12 question.</p> <p>13 <b>A The answer is no.</b></p> <p>14 Q So Mr. Wahi never explained to you what</p> <p>15 he invented in the '802 patent?</p> <p>16 <b>A No, he didn't. I just know what the</b></p> <p>17 <b>patent says.</b></p> <p>18 Q Did any of your conversations with</p> <p>19 Mr. Wahi relate to his claims that other companies</p> <p>20 have been infringing the '802 patent?</p> <p>21 <b>A Obviously he informed me that Matrixx</b></p> <p>22 <b>Initiatives was infringing. Or that that was his</b></p> <p>23 <b>opinion.</b></p> <p>24 Q Did he explain to you his explanation for</p> <p>25 why he believes that Matrixx was infringing?</p>	<p>35</p> <p>1 <b>A I don't recall now.</b></p> <p>2 Q Did you speak to Mr. -- or, I'm sorry,</p> <p>3 did you speak to Dr. Lemmo in connection with the</p> <p>4 Matrixx litigation?</p> <p>5 <b>A No, I have not.</b></p> <p>6 Q So have you ever had any conversation</p> <p>7 with Dr. Lemmo at any point in time?</p> <p>8 <b>A Well, not since the conclusion of the</b></p> <p>9 <b>Matrixx litigation I haven't spoken to him.</b></p> <p>10 Q Did you have any conversations with</p> <p>11 Dr. Lemmo during the course of the Matrixx</p> <p>12 litigation?</p> <p>13 <b>A Yeah, I met him one time and may have</b></p> <p>14 <b>spoken to him by telephone a few times.</b></p> <p>15 Q And what was the purpose for that one</p> <p>16 meeting with Dr. Lemmo?</p> <p>17 <b>A He was retained as an expert for Trutek</b></p> <p>18 <b>in that litigation.</b></p> <p>19 Q So why did you meet with him? What did</p> <p>20 you discuss at that meeting?</p> <p>21 <b>A The scope of the patent claims, and more</b></p> <p>22 <b>importantly what the composition of the Zicam</b></p> <p>23 <b>product was and if it read upon the claims and we</b></p> <p>24 <b>had a basis for proving infringement.</b></p> <p>25 Q Did you have any conversations with</p>
<p>34</p> <p>1 <b>A Yeah, he explained.</b></p> <p>2 Q And in the context of providing that</p> <p>3 explanation, did he provide any explanation about</p> <p>4 the scope of the '802 patent or the claimed</p> <p>5 invention of the '802 patent?</p> <p>6 <b>A Indirectly. He just pointed out what the</b></p> <p>7 <b>Matrixx product called Zicam involved, and how it</b></p> <p>8 <b>read upon the claims of the '802 patent.</b></p> <p>9 Q And you understand that Trutek has</p> <p>10 retained the services of other experts in this</p> <p>11 present litigation. Correct?</p> <p>12 <b>A I'm aware of a few names, yes.</b></p> <p>13 Q Have you spoken with any of the other</p> <p>14 experts retained by Trutek in this litigation?</p> <p>15 <b>A I know one of them, but I haven't spoken</b></p> <p>16 <b>to him in the context of this litigation.</b></p> <p>17 Q And who is that?</p> <p>18 <b>A Dr. Lemmo.</b></p> <p>19 Q And how do you know Dr. Lemmo?</p> <p>20 <b>A He was an expert in the Matrixx</b></p> <p>21 <b>litigation.</b></p> <p>22 Q What was he asked to opine on in the</p> <p>23 Matrixx litigation?</p> <p>24 <b>A Broadly on the subject of infringement.</b></p> <p>25 Q Anything else?</p>	<p>36</p> <p>1 Dr. Lemmo during the course of the Matrixx</p> <p>2 litigation concerning any invalidity challenges</p> <p>3 raised against the '802 patent?</p> <p>4 <b>A No, I was not involved.</b></p> <p>5 Q Who was involved in those?</p> <p>6 <b>A Mr. Kremen.</b></p> <p>7 Q And just to confirm, you have not met</p> <p>8 with or spoken to Dr. Lemmo since the Matrixx</p> <p>9 litigation concluded?</p> <p>10 <b>A I have already said that.</b></p> <p>11 <b>Yes, I have not.</b></p> <p>12 Q Have you reviewed any of the reports that</p> <p>13 Dr. Lemmo prepared in this litigation filed</p> <p>14 against BlueWillow Biologics?</p> <p>15 <b>A Yes, I have.</b></p> <p>16 Q Which of Dr. Lemmo's reports or</p> <p>17 declarations have you reviewed?</p> <p>18 <b>A They're not before me, so I cannot tell</b></p> <p>19 <b>you exactly what, but he did render an opinion</b></p> <p>20 <b>that I have read.</b></p> <p>21 Q And do you recall when you read that</p> <p>22 opinion rendered by Dr. Lemmo?</p> <p>23 <b>A It will be sometime this month.</b></p> <p>24 Q So --</p> <p>25 <b>A October, that is. October 2022.</b></p>

October 28, 2022

<p>37</p> <p>1 Q So you reviewed at least one of</p> <p>2 Dr. Lemmo's reports sometime this month.</p> <p>3 A <b>That is correct.</b></p> <p>4 Q Did you review any of Dr. Lemmo's reports</p> <p>5 or declarations before you formed the opinions</p> <p>6 that you provided in your expert report?</p> <p>7 A <b>Actually, I don't think so.</b></p> <p>8 <b>Chronologically I probably saw his report after</b></p> <p>9 <b>mine was prepared.</b></p> <p>10 Q And then what about the other two experts</p> <p>11 retained by Trutek in this matter, Mr. Burns and</p> <p>12 Dr. Ermakov. Do you know those names?</p> <p>13 A <b>I've heard those names. I haven't met</b></p> <p>14 <b>them.</b></p> <p>15 Q You have never met Mr. Burns in any</p> <p>16 context.</p> <p>17 Is that correct?</p> <p>18 A <b>That is correct.</b></p> <p>19 Q And have you ever met Dr. Ermakov in any</p> <p>20 context?</p> <p>21 A <b>No.</b></p> <p>22 Q Did you meet with Mr. Burns or have any</p> <p>23 conversations with Mr. Burns in connection with</p> <p>24 the Matrixx matter?</p> <p>25 A <b>No.</b></p>	<p>39</p> <p>1 your expert report?</p> <p>2 A <b>No.</b></p> <p>3 Q Now, you've submitted one expert report</p> <p>4 in this matter. Correct?</p> <p>5 A <b>Yes.</b></p> <p>6 Q What was the nature of your assignment?</p> <p>7 A <b>To rebut the allegations of invalidity</b></p> <p>8 <b>put forth by your expert, Dr. Amiji.</b></p> <p>9 Q Does your responsive report contain all</p> <p>10 of the opinions that you have formed directed to</p> <p>11 the issue of validity of the '802 patent?</p> <p>12 MR. KREMEN: Objection to the form of the</p> <p>13 question.</p> <p>14 A <b>Well, I don't want to put myself in some</b></p> <p>15 <b>kind of a conundrum, but yes. Basically,</b></p> <p>16 <b>generally speaking, the answer is yes. But I</b></p> <p>17 <b>reserve the right to issue any amendments.</b></p> <p>18 Q But as of today you do not have any</p> <p>19 amendments or any changes to your report?</p> <p>20 A <b>No.</b></p> <p>21 Q Does your responsive report contain a</p> <p>22 complete statement of all of the bases for your</p> <p>23 opinions?</p> <p>24 A <b>Complete statement as of the time it was</b></p> <p>25 <b>prepared. But as I said earlier, supplements and</b></p>
<p>38</p> <p>1 Q Did you meet with Dr. Ermakov or have any</p> <p>2 conversations with Dr. Ermakov in connection with</p> <p>3 the Matrixx matter?</p> <p>4 A <b>No.</b></p> <p>5 Q And you understand that Mr. Burns and</p> <p>6 Dr. Ermakov conducted testing in connection with</p> <p>7 the Matrixx matter. Correct?</p> <p>8 A <b>I cannot say that I know that for sure.</b></p> <p>9 <b>I've just been told that.</b></p> <p>10 Q Well, the testing that Dr. Ermakov and</p> <p>11 Mr. Burns conducted on the Matrixx products, that</p> <p>12 was part of the record in the Matrixx litigation,</p> <p>13 was it not?</p> <p>14 A <b>I do not recall that.</b></p> <p>15 Q Were you involved in the decision to</p> <p>16 engage Mr. Burns or Dr. Ermakov to conduct any</p> <p>17 testing for Trutek in either litigation matter?</p> <p>18 A <b>No.</b></p> <p>19 Q Have you reviewed any of the reports</p> <p>20 prepared by Mr. Burns or Dr. Ermakov in either of</p> <p>21 the litigation matters?</p> <p>22 A <b>No.</b></p> <p>23 Q Now, specifically with respect to this</p> <p>24 litigation, did anybody else assist you in</p> <p>25 formulating the opinions that are contained in</p>	<p>40</p> <p>1 <b>amendments are still a possibility.</b></p> <p>2 Q Yeah, of course. I'm just referring to</p> <p>3 the report as it was prepared.</p> <p>4 So the answer is, yes, the report as</p> <p>5 prepared contains a complete statement of all of</p> <p>6 the bases for your opinions?</p> <p>7 A <b>Yes, on the date it was prepared. Yes.</b></p> <p>8 Q And does your responsive report contain a</p> <p>9 complete statement of your qualifications directed</p> <p>10 to the subject matter of your opinions?</p> <p>11 A <b>My qualifications are what they are,</b></p> <p>12 <b>yeah.</b></p> <p>13 Q Did you draft the expert report by</p> <p>14 yourself?</p> <p>15 A <b>Yes, I did.</b></p> <p>16 Q Did you receive any assistance in</p> <p>17 drafting your report?</p> <p>18 A <b>No; only background materials that were</b></p> <p>19 <b>supplied to me, including in particular</b></p> <p>20 <b>Dr. Amiji's report and whatever Dr. Amiji refers</b></p> <p>21 <b>to.</b></p> <p>22 Q What other background materials were</p> <p>23 supplied to you?</p> <p>24 A <b>Well, as I said to you before -- it's</b></p> <p>25 <b>already on the record -- the Wadstrom and the Rolf</b></p>

## Transcript of Amirali Y. Haidri, Esquire

11 (41 to 44)

October 28, 2022

<p>41</p> <p>1 <b>patents, Khaled, Baker, and a few others.</b></p> <p>2 Q So you're talking about the references</p> <p>3 discussed by Dr. Amiji. Correct?</p> <p>4 <b>A Prior publications, yes.</b></p> <p>5 Q What I'm asking about is whether there</p> <p>6 are -- strike that.</p> <p>7 So every section of your responsive</p> <p>8 report is your own opinion and drafted in your own</p> <p>9 words.</p> <p>10 Is that correct?</p> <p>11 <b>A That is correct.</b></p> <p>12 Q Mr. Haidri, what did you do to prepare</p> <p>13 for your deposition today?</p> <p>14 <b>A I reviewed -- rereviewed my own report</b></p> <p>15 <b>and deposition of Dr. Lemmo and the reports of</b></p> <p>16 <b>Dr. Amiji.</b></p> <p>17 Q Did you review the deposition transcript</p> <p>18 of Dr. Amiji?</p> <p>19 <b>A Yes.</b></p> <p>20 Q Did you review any other materials to</p> <p>21 prepare for your deposition today, besides your</p> <p>22 report, Dr. Lemmo's transcript, Dr. Amiji's report</p> <p>23 on invalidity, and Dr. Amiji's deposition</p> <p>24 transcript?</p> <p>25 <b>A That is correct. I can't say that that's</b></p>	<p>43</p> <p>1 Trutek to prepare for your deposition today?</p> <p>2 <b>A No.</b></p> <p>3 MS. PETERSON: How about we go off the</p> <p>4 record.</p> <p>5 VIDEO SPECIALIST: We're going off the</p> <p>6 record. The time is now 11:09 a.m.</p> <p>7 (A recess was taken.)</p> <p>8 VIDEO SPECIALIST: We're back on the</p> <p>9 record. The time is now 11:20 a.m.</p> <p>10 BY MS. PETERSON:</p> <p>11 Q Mr. Haidri, one other question about the</p> <p>12 Matrixx litigation.</p> <p>13 Why did Mr. Kremen not apply for pro hac</p> <p>14 vice admission for the Matrixx litigation matter</p> <p>15 until nine months after the complaint was filed?</p> <p>16 MR. KREMEN: Objection to form.</p> <p>17 <b>A It's because Mr. Kremen was not a member</b></p> <p>18 <b>of any bar at the time the complaint was filed.</b></p> <p>19 Q So for the nine months leading up to that</p> <p>20 point in time, you were the only attorney</p> <p>21 representing Trutek that was a member of any state</p> <p>22 bar of the United States?</p> <p>23 <b>A I was, yes, only attorney.</b></p> <p>24 Q Mr. Haidri, we're going to show you a</p> <p>25 couple of exhibits during the rest -- the</p>
<p>42</p> <p>1 <b>everything, but I did look at the prior art</b></p> <p>2 <b>citations and the first office action that issued</b></p> <p>3 <b>in the '802 patent.</b></p> <p>4 Q So you reviewed each of those items, in</p> <p>5 addition to some prior art, as well as the first</p> <p>6 office action issued in the '802 patent.</p> <p>7 Is that correct?</p> <p>8 <b>A Broadly speaking, yes.</b></p> <p>9 Q Do you recall any -- never mind.</p> <p>10 Did you meet with anybody to prepare for</p> <p>11 your deposition today?</p> <p>12 <b>A I met with Mr. Kremen.</b></p> <p>13 Q For how long?</p> <p>14 <b>A A few hours.</b></p> <p>15 Q And when did that meeting occur?</p> <p>16 <b>A Over a couple of weeks on and off.</b></p> <p>17 Q So you spoke with Mr. Kremen on a few</p> <p>18 occasions over the last few weeks for a few hours</p> <p>19 in total.</p> <p>20 Does that sound about right?</p> <p>21 <b>A That is right.</b></p> <p>22 Q Did you meet with or speak to anybody</p> <p>23 else to prepare for your deposition today?</p> <p>24 <b>A Nobody else.</b></p> <p>25 Q Did you meet with or speak to anybody at</p>	<p>44</p> <p>1 remainder of the deposition. Jennifer is going to</p> <p>2 put those up on the screen. And if you would like</p> <p>3 us to move through them just ask us, and we can</p> <p>4 zoom in or we can scroll through. Okay?</p> <p>5 <b>A All right.</b></p> <p>6 MS. PETERSON: So let's mark as Exhibit</p> <p>7 32 a copy of Mr. Haidri's CV.</p> <p>8 A/V TECHNICIAN: Stand by, please.</p> <p>9 (Deposition Exhibit 32 marked for</p> <p>10 identification and is attached to the transcript.)</p> <p>11 Q Mr. Haidri, do you recognize Exhibit 32</p> <p>12 as a copy of your CV?</p> <p>13 <b>A It is. It is, yes.</b></p> <p>14 Q Is it complete?</p> <p>15 <b>A Complete as of today, yes. About to make</b></p> <p>16 <b>some revisions.</b></p> <p>17 Q You have some revisions to include.</p> <p>18 Would that be more recent information, to include</p> <p>19 in the CV?</p> <p>20 <b>A More recent, yes.</b></p> <p>21 Q Do you have any other revisions to make</p> <p>22 apart from the more recent things to include?</p> <p>23 <b>A No, there are no revisions to make as of</b></p> <p>24 <b>today, but there will be some coming.</b></p> <p>25 Q Now, it looks like you obtained your</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

## Transcript of Amirali Y. Haidri, Esquire

12 (45 to 48)

October 28, 2022

<p>1 bachelor's degree in 1971. Correct?</p> <p>2 <b>A Yes.</b></p> <p>3 Q And at that point in time -- actually, we</p> <p>4 could scroll down to the second page.</p> <p>5 <b>A Okay.</b></p> <p>6 Q Actually, I take that back. Let's go to</p> <p>7 the very last page.</p> <p>8 There we go. And we can start at the</p> <p>9 bottom.</p> <p>10 So after obtaining your bachelor's degree</p> <p>11 in 1971, you started to work for W.P. Thompson &amp;</p> <p>12 Company. Correct?</p> <p>13 <b>A Correct.</b></p> <p>14 Q And that involved trademark work?</p> <p>15 <b>A Yes.</b></p> <p>16 Q And from there you went to Haseltine &amp;</p> <p>17 Lake from 1972 to 1981. Correct?</p> <p>18 <b>A Correct.</b></p> <p>19 Q And that also involved trademark work?</p> <p>20 <b>A Yes.</b></p> <p>21 Q And then it looks like in 1980, over that</p> <p>22 time frame, that's when you obtained your J.D.?</p> <p>23 <b>A In '80, yes.</b></p> <p>24 Q And then in 1981, from 1982, you worked</p> <p>25 for the Texaco Development Corporation?</p>	<p>1 Q And what would be -- what would you say</p> <p>2 is the primary focus of your work over that time</p> <p>3 frame as a solo practitioner?</p> <p>4 <b>A It had been tort and insurance law up to</b></p> <p>5 <b>about two, three years ago. But I began to return</b></p> <p>6 <b>to patent and trademark and commercial litigation</b></p> <p>7 <b>practice.</b></p> <p>8 Q So from 1988 up until about two to three</p> <p>9 years ago, your practice had been tort and</p> <p>10 insurance law?</p> <p>11 Is that right?</p> <p>12 <b>A Yes.</b></p> <p>13 Q And then about two to three years ago you</p> <p>14 returned to patent, trademark, and commercial</p> <p>15 litigation practice.</p> <p>16 Is that correct?</p> <p>17 <b>A I began to diversify then, and that would</b></p> <p>18 <b>be correct.</b></p> <p>19 Q So over the last two to three years, are</p> <p>20 you still engaged in tort and insurance law</p> <p>21 claims?</p> <p>22 <b>A Yes. Yes, I am.</b></p> <p>23 Q Over the last two to three years, what</p> <p>24 would you say has been the approximate percentage</p> <p>25 of your work relating to patents?</p>
<p>1 <b>A Yes.</b></p> <p>2 Q And your responsibilities at Texaco were</p> <p>3 as a patent attorney. Correct?</p> <p>4 <b>A Correct.</b></p> <p>5 Q We can scroll up.</p> <p>6 And then from 1982 to 1984 you were</p> <p>7 employed by Lever Brothers Company, also has a</p> <p>8 patent attorney. Correct?</p> <p>9 <b>A Yes.</b></p> <p>10 Q And scroll up, please. There we go.</p> <p>11 That's good.</p> <p>12 And then it looks like from 1984 to 1988</p> <p>13 you were a partner in the law firm of Haidri,</p> <p>14 Glazer &amp; Kamel.</p> <p>15 Is that correct?</p> <p>16 <b>A Yes.</b></p> <p>17 Q And your practice at that law firm</p> <p>18 concentrated in personal injury and workers'</p> <p>19 compensation claims.</p> <p>20 Is that correct?</p> <p>21 <b>A Substantially, yes.</b></p> <p>22 Q And then starting in 1988 to the present,</p> <p>23 it says that you have been a solo practitioner.</p> <p>24 Right?</p> <p>25 <b>A Yes.</b></p>	<p>1 <b>A Possibly 20 percent.</b></p> <p>2 Q And would most of that work relating to</p> <p>3 patents involve the matters on which you have been</p> <p>4 engaged by Trutek?</p> <p>5 <b>A And Mr. Araujo.</b></p> <p>6 Q Mr. Haidri, you do not have any</p> <p>7 experience in the formulation or development of</p> <p>8 oil and water nanoemulsions. Correct?</p> <p>9 <b>A No; I have to disagree.</b></p> <p>10 Q What experience do you have in the</p> <p>11 formulation or development of oil and water</p> <p>12 nanoemulsions?</p> <p>13 <b>A In Texaco Development Corporation, they</b></p> <p>14 <b>had work of that kind going on in patents directed</b></p> <p>15 <b>to it. And also in Lever Brothers Company, which</b></p> <p>16 <b>is a rather diversified company; not just</b></p> <p>17 <b>concentrating in soaps and detergents and</b></p> <p>18 <b>toothpaste.</b></p> <p>19 Q So would it be fair to say that your</p> <p>20 experience with nanoemulsions at Texaco and with</p> <p>21 Lever Brothers was from the context of being a</p> <p>22 patent lawyer?</p> <p>23 <b>A Yes; not as an inventor, but I was a</b></p> <p>24 <b>patent attorney. Yes.</b></p> <p>25 Q So you were not in the laboratory at</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

October 28, 2022

<p>49</p> <p>1 Texaco or at Lever Brothers actually making any 2 nanoemulsions or testing any nanoemulsions. 3 Correct? 4 <b>A Well, I would say yes, I had frequent 5 contact with the inventors and went into the 6 laboratories in both corporations.</b> 7 Q But you, personally, were not involved in 8 the production or formulation of any nanoemulsions 9 while employed by Texaco or Lever Brothers. 10 Right? 11 MR. KREMEN: Objection to form. 12 <b>A I did not personally do it, do that.</b> 13 Q And the work that was being conducted at 14 Texaco and Lever Brothers with respect to 15 nanoemulsions, those were not nanoemulsions 16 intended for nasal administration. Correct? 17 <b>A I would not agree, no.</b> 18 Q Okay. Can you explain? 19 <b>A Not at Texaco but At Lever, they were 20 engaged in personal products, and some of them 21 would be for just any kind of human application.</b> 22 Q And that would be the soaps? 23 <b>A Not really. They had -- during my time 24 there, they had different certain uses for 25 something called Sanosil analytes, and they</b></p>	<p>51</p> <p><b>1 were doing that.</b> 2 Q And was that experience something that 3 you obtained from representing Trutek? 4 <b>A No. That was at Lever Brothers.</b> 5 Q Lever products. Okay. 6 Do you have any hands-on experience in 7 formulating pharmaceutical compositions that are 8 intended to inhibit infection caused by bacteria? 9 <b>A No hands-on experience, but only as a 10 patent attorney.</b> 11 Q And that would be from reviewing 12 materials provided by the inventors for purposes 13 of applying for a patent? 14 <b>A That is correct.</b> 15 Q Do you have any hands-on experience in 16 formulating pharmaceutical compositions that are 17 intended to inhibit infection caused by viruses? 18 <b>A As a patent attorney, you have to 19 understand that an inventor provides you just a 20 very sketchy idea of it, of an invention. And the 21 patent attorney has to put meat on the skeleton. 22 So I have been involved in that.</b> 23 Q Now, apart from your work as a patent 24 attorney, do you have any hands-on experience in 25 formulating pharmaceutical compositions that are</p>
<p>50</p> <p><b>1 believed that that would be beneficial in human 2 used in just about any bodily cavity.</b> 3 Q Would it be fair to say that you do not 4 have any hands-on experience in preparing any 5 nanoemulsion -- any nanoemulsions? 6 <b>A Not during my employment, but certainly 7 during the laboratories of my alma maters and my 8 high school.</b> 9 Q So you're telling me that you prepared 10 nanoemulsions in high school? 11 <b>A Emulsions of various kinds, not 12 necessarily nano. But we were taught how 13 emulsions are made, and we made them.</b> 14 Q In what high school course were you 15 taught about emulsions and how to make them? 16 <b>A Physics and chemistry and biology.</b> 17 Q So you're talking about high school level 18 of physics, chemistry, and biology courses? 19 <b>A Yes.</b> 20 Q Dr. Haidri, do you have any hands-on 21 experience in formulating pharmaceutical 22 compositions that are intended to be applied to 23 the nose? 24 <b>A No hands-on experience, but I had 25 involvement as a patent attorney, or inventors who</b></p>	<p>52</p> <p>intended to inhibit infection caused by viruses? 2 <b>A No.</b> 3 Q Apart from your work as a patent 4 attorney, do you have any hands-on experience in 5 formulating pharmaceutical compositions that are 6 intended to inhibit the nasal inhalation of any 7 environmental particulate matters? 8 <b>A No.</b> 9 Q Apart from your work as a patent 10 attorney, do you have any hands-on experience in 11 formulating pharmaceutical compositions that are 12 intended to capture and hold particulate matter 13 within the human nose? 14 <b>A No.</b> 15 Q Apart from your work as a patent 16 attorney, do you have any hands-on experience in 17 formulating pharmaceutical compositions that 18 comprise cationic or anionic agents? 19 <b>A No.</b> 20 Q Apart from your work as a patent 21 attorney, do you have any hands-on experience in 22 formulating pharmaceutical compositions that 23 comprise biocidal agents? 24 I'm sorry, are you still thinking about 25 my question, or do you need me to repeat it?</p>

October 28, 2022

<p>53</p> <p>1 <b>A I didn't hear your question.</b></p> <p>2 Q Okay. So apart from your work as a</p> <p>3 patent attorney, do you have any hands-on</p> <p>4 experience in formulating pharmaceutical</p> <p>5 compositions that comprise biocidal agents?</p> <p>6 <b>A No.</b></p> <p>7 Q Apart from your work as a patent</p> <p>8 attorney, do you have any hands-on experience in</p> <p>9 formulating pharmaceutical compositions with</p> <p>10 biocidal agents for application for nasal</p> <p>11 administration?</p> <p>12 <b>A No.</b></p> <p>13 Q Apart from your work as a patent</p> <p>14 attorney, do you have any hands-on experience in</p> <p>15 formulating pharmaceutical compositions comprising</p> <p>16 biocidal agents to use them to inhibit infection</p> <p>17 by bacteria or viruses?</p> <p>18 <b>A Please repeat that question. That was</b></p> <p>19 <b>rather long.</b></p> <p>20 Q Okay. No problem.</p> <p>21 Apart from your work as a patent</p> <p>22 attorney, do you have any hands-on experience in</p> <p>23 formulating pharmaceutical compositions that use</p> <p>24 biocidal agents for the purpose of inhibiting</p> <p>25 infection by bacteria or viruses?</p>	<p>55</p> <p>1 Q Mr. Haidri, do you have any hands-on</p> <p>2 experience in developing or formulating</p> <p>3 pharmaceutical products intended to prevent</p> <p>4 infection caused by the common cold?</p> <p>5 <b>A No.</b></p> <p>6 Q Do you have any hands-on experience in</p> <p>7 developing or formulating pharmaceutical products</p> <p>8 intended to prevent infection caused by the flu?</p> <p>9 <b>A Hard for me to say. But broadly</b></p> <p>10 <b>speaking, I will say no.</b></p> <p>11 Q Mr. Haidri, you do not have an economics</p> <p>12 or accounting degree. Correct?</p> <p>13 <b>A Technically, yes; except that I had</b></p> <p>14 <b>economics courses in my education.</b></p> <p>15 Q Mr. Haidri, would it be fair to say that</p> <p>16 over the course of your career working for private</p> <p>17 companies, you were not primarily engaged in the</p> <p>18 sales or marketing or advertising of any</p> <p>19 commercial products?</p> <p>20 <b>A No.</b></p> <p>21 Q I'm sorry, I need to clarify. No, you</p> <p>22 were not engaged in the sales or marketing or</p> <p>23 advertising of any commercial products?</p> <p>24 Is that correct?</p> <p>25 <b>A Yes, that is correct.</b></p>
<p>54</p> <p>1 <b>A No.</b></p> <p>2 Q Do you have any hands-on experience in</p> <p>3 testing any pharmaceutical compositions to confirm</p> <p>4 whether they will work for their intended purpose?</p> <p>5 MR. KREMEN: Objection to the form of the</p> <p>6 question.</p> <p>7 <b>A No.</b></p> <p>8 Q Do you have any hands-on experience in</p> <p>9 testing pharmaceutical compositions to determine</p> <p>10 if they are effective to capture and hold</p> <p>11 particulate matter within the nose or nasal</p> <p>12 passage?</p> <p>13 <b>A No.</b></p> <p>14 Q Do you have any hands-on experience in</p> <p>15 testing pharmaceutical compositions to determine</p> <p>16 if they are effective to inhibit infection by</p> <p>17 bacteria and viruses?</p> <p>18 <b>A No.</b></p> <p>19 Q Do you have any hands-on experience in</p> <p>20 developing or formulating pharmaceutical products</p> <p>21 intended to prevent infection caused by the common</p> <p>22 cold?</p> <p>23 MR. KREMEN: Would you repeat that again?</p> <p>24 I lost -- I got lost in the middle of it.</p> <p>25 MS. PETERSON: Sure, I can repeat it.</p>	<p>56</p> <p>1 Q And would it also be fair to say that</p> <p>2 over the course of your career working for private</p> <p>3 companies, you did not have any job</p> <p>4 responsibilities for product development?</p> <p>5 <b>A No.</b></p> <p>6 Q So no, you did not have any</p> <p>7 responsibility for product development of any</p> <p>8 commercial products at your prior employers?</p> <p>9 <b>A No; only as a support patent attorney.</b></p> <p>10 Q And at your prior employment, did you</p> <p>11 have any responsibility for any clinical testing</p> <p>12 or clinical development of commercial products?</p> <p>13 <b>A Not with prior employments, employers,</b></p> <p>14 <b>no.</b></p> <p>15 Q But you did as a patent attorney?</p> <p>16 <b>A No.</b></p> <p>17 Q Do you have any experience in human</p> <p>18 clinical testing?</p> <p>19 <b>A No, not personally.</b></p> <p>20 MS. PETERSON: Okay. We could take down</p> <p>21 that exhibit.</p> <p>22 Next I would like to pull up a copy of</p> <p>23 Exhibit 2, which had been previously marked. This</p> <p>24 is a copy of the '802 patent.</p> <p>25 (Exhibit 2, previously marked, not</p>

October 28, 2022

<p>57</p> <p>1 attached.)</p> <p>2 Q Mr. Haidri, we've put up on the screen</p> <p>3 here a copy of U.S. Patent Number 8,163,802, which</p> <p>4 has been marked as Exhibit 2.</p> <p>5 Do you recognize this?</p> <p>6 A Yes, I do.</p> <p>7 Q And you recognize this as a copy of the</p> <p>8 '802 patent that's being asserted in this</p> <p>9 litigation against BlueWillow. Correct?</p> <p>10 A That is what I have been informed.</p> <p>11 Q This is the patent that you considered in</p> <p>12 your expert report. Right?</p> <p>13 A Yes.</p> <p>14 Q Let's scroll down to the last page.</p> <p>15 MR. KREMEN: Excuse me. Debbie or</p> <p>16 whoever, could we zoom in one level so that it</p> <p>17 fills the screen? Because Mr. Haidri has</p> <p>18 difficulty seeing it. Thank you so much.</p> <p>19 THE WITNESS: Thank you.</p> <p>20 MS. PETERSON: Could we go to the last</p> <p>21 page of the exhibit, please. Actually, I'm sorry,</p> <p>22 second-to-last page. Yep. And maybe scroll down</p> <p>23 a little bit. And then -- okay.</p> <p>24 Q Mr. Haidri, do you see Claims 1 and 2</p> <p>25 listed on the screen in front of you?</p>	<p>59</p> <p>1 A It's not a limitation. That's what the</p> <p>2 claim says.</p> <p>3 Q For a product to read on the claim, is it</p> <p>4 necessary to satisfy the elements of the claim</p> <p>5 preamble?</p> <p>6 A The claim as a whole. You cannot split</p> <p>7 it into different parts and say, for this reason</p> <p>8 this doesn't read. You have to consider the claim</p> <p>9 as a whole.</p> <p>10 Q But you agree with me that every element</p> <p>11 of the claim must be present in an accused product</p> <p>12 for it to read on the claim. Correct?</p> <p>13 A Generally speaking, yes.</p> <p>14 Q And that would include the elements of</p> <p>15 the claim preamble. Right?</p> <p>16 A It would.</p> <p>17 Q So looking at Element A, it recites,</p> <p>18 "Electrostatically attracting the particulate</p> <p>19 matter to the thin film."</p> <p>20 Right?</p> <p>21 A That's what it says.</p> <p>22 Q And that's what you referred to in your</p> <p>23 report as capturing?</p> <p>24 A It's a equivalent term, yes.</p> <p>25 Q Well, you did use the phrase "capturing"</p>
<p>58</p> <p>1 A Yes.</p> <p>2 Q So I'd like to focus on Claim 1. You'd</p> <p>3 agree with me that Claim 1 has a preamble?</p> <p>4 A A method -- yeah, okay, I see the</p> <p>5 preamble.</p> <p>6 Q And then following the preamble of Claim</p> <p>7 1, there are three claim elements. Right? A, B,</p> <p>8 and C?</p> <p>9 A Yes.</p> <p>10 Q Element -- and looking at the preamble,</p> <p>11 it refers to a method for electrostatically</p> <p>12 inhibiting harmful particulate matter from</p> <p>13 infecting an individual through nasal inhalation.</p> <p>14 Correct?</p> <p>15 A That's what it says.</p> <p>16 Q And then going on, Wherein a formulation</p> <p>17 is applied to skin or tissue of nasal passages of</p> <p>18 the individual in a thin film.</p> <p>19 Correct?</p> <p>20 A Yes.</p> <p>21 Q And it's your understanding that this</p> <p>22 language of the preamble is limiting. Right?</p> <p>23 A Limiting in what sense? I didn't follow</p> <p>24 you.</p> <p>25 Q Is it a claim limitation?</p>	<p>60</p> <p>1 in your report with respect to Element A of the</p> <p>2 claims. Right?</p> <p>3 A Yes.</p> <p>4 Q And then Element B recites, "Holding the</p> <p>5 particulate matter in place by adjusting the</p> <p>6 adhesion of the thin film to permit said thin film</p> <p>7 to stick to the skin or tissue and by adjusting</p> <p>8 the cohesion of the formulation to provide</p> <p>9 adequate impermeability to the thin film."</p> <p>10 That's the element that you referred to</p> <p>11 in your report as holding. Right?</p> <p>12 A Yes, it is holding in general.</p> <p>13 Q And then the final element of Claim 1 is,</p> <p>14 "Inactivating the particulate matter by adding at</p> <p>15 least one ingredient that would render said</p> <p>16 particulate matter harmless."</p> <p>17 That would be the element you referred to</p> <p>18 in your report as killing. Correct?</p> <p>19 A Killing or biocide, yes.</p> <p>20 MS. PETERSON: Can we scroll down a</p> <p>21 little bit to look at Claim 2.</p> <p>22 Q Claim 2 is another independent claim,</p> <p>23 except that it recites a formulation instead of a</p> <p>24 method. Correct?</p> <p>25 A Yes.</p>

October 28, 2022

<p>61</p> <p>1 Q But it requires those same three elements</p> <p>2 of catching, holding, and killing as you described</p> <p>3 in your report?</p> <p>4 <b>A That is correct.</b></p> <p>5 Q Now, do you agree that Claims 1 and 2 do</p> <p>6 not recite just a formulation having certain</p> <p>7 ingredients?</p> <p>8 <b>A Would I agree with what? I'm not sure</b></p> <p>9 <b>what you mean.</b></p> <p>10 Q Well, Claims 1 and 2 are not drafted as a</p> <p>11 formulation containing a list of ingredients.</p> <p>12 Correct?</p> <p>13 <b>A No, no formulations are included.</b></p> <p>14 Q Rather, the claims are drafted with</p> <p>15 respect to the catching, holding, and killing</p> <p>16 functions that you identified. Right?</p> <p>17 <b>A Only the functions, yes.</b></p> <p>18 MS. PETERSON: Could we zoom that out and</p> <p>19 move forward a few pages to --</p> <p>20 MR. KREMEN: Go one more page.</p> <p>21 MS. PETERSON: -- Page 4 of the PDF?</p> <p>22 A/V TECHNICIAN: I'm sorry, Counsel,</p> <p>23 which page?</p> <p>24 MS. PETERSON: Page 4 of the PDF.</p> <p>25 Q And, Mr. Haidri, you understand that the</p>	<p>63</p> <p>1 <b>clear from the specification.</b></p> <p>2 Q And there's nothing in the '802 patent</p> <p>3 specification indicating that any of these</p> <p>4 formulations were tested to whether they performed</p> <p>5 the functions recited in the '802 patent claims.</p> <p>6 Right?</p> <p>7 <b>A Again, I repeat my previous answer. You</b></p> <p>8 <b>cannot say yes or no. But this is not included in</b></p> <p>9 <b>the specification.</b></p> <p>10 Q So the specification does not include</p> <p>11 anything about any testing of the formulations to</p> <p>12 determine whether they perform the functions</p> <p>13 recited in the '802 patent claims. Right?</p> <p>14 <b>A There is no such recitation in the</b></p> <p>15 <b>specification.</b></p> <p>16 Q And there is no -- nothing in the '802</p> <p>17 patent that reports the surface charge of any of</p> <p>18 the formulations listed in Tables 1 through 10?</p> <p>19 <b>A Can you repeat that? I don't understand</b></p> <p>20 <b>what you mean by "surface charge."</b></p> <p>21 Q Is there anything in the '802 patent that</p> <p>22 reports the testing of any of the formulations</p> <p>23 listed in the tables to determine whether they</p> <p>24 exhibit an electrostatic charge?</p> <p>25 <b>A It is not mentioned explicitly, but there</b></p>
<p>62</p> <p>1 '802 patent contains ten tables with a list of</p> <p>2 formulations. Correct?</p> <p>3 <b>A Yes.</b></p> <p>4 Q And the formulations provided in those</p> <p>5 ten tables contain a number of ingredients listed.</p> <p>6 Right?</p> <p>7 <b>A That is correct.</b></p> <p>8 Q And for many of those ingredients, rather</p> <p>9 than providing a specific amount of the</p> <p>10 ingredient, it's provided in terms of a range.</p> <p>11 Right?</p> <p>12 <b>A It is correct.</b></p> <p>13 Q And you understand that there is nothing</p> <p>14 in the '802 patent indicating that any of these</p> <p>15 formulations were made. Correctly -- correct?</p> <p>16 MR. KREMEN: Object to the form of the</p> <p>17 question.</p> <p>18 Q Let me ask that question again. That was</p> <p>19 bad.</p> <p>20 You understand that there is nothing in</p> <p>21 the '802 patent specifically stating that any of</p> <p>22 these formulations were made. Correct?</p> <p>23 MR. KREMEN: Objection.</p> <p>24 <b>A There is no indication as to whether the,</b></p> <p>25 <b>formulations were made or not made. That is not</b></p>	<p>64</p> <p>1 <b>are compounds here which are known to be cationic.</b></p> <p>2 Q Is there anything in the '802 patent that</p> <p>3 reports the testing of any of the formulations</p> <p>4 listed in the table to determine whether they</p> <p>5 exhibit an electrostatic charge when applied to</p> <p>6 the skin in or around the nose of a human?</p> <p>7 MR. KREMEN: Objection to the form of the</p> <p>8 question.</p> <p>9 <b>A I would ask that that question be</b></p> <p>10 <b>repeated. It's a little too long and convoluted.</b></p> <p>11 Q It might help too, if I can get the</p> <p>12 entire question stated on the record before anyone</p> <p>13 else speaks. But I can certainly repeat it.</p> <p>14 Is there anything in the '802 patent that</p> <p>15 reports the testing of any of the formulations</p> <p>16 listed in the tables to determine whether they</p> <p>17 exhibited an electrostatic charge when applied to</p> <p>18 a human nose?</p> <p>19 <b>A There is no such expletive mentioned,</b></p> <p>20 <b>yes.</b></p> <p>21 Q Does the '802 patent identify any</p> <p>22 specific test that someone could use to determine</p> <p>23 whether a formulation electrostatically inhibits</p> <p>24 harmful particulate matter from infecting an</p> <p>25 individual through nasal inhalation?</p>

October 28, 2022

<p>65</p> <p>1 <b>A That is a -- that is a general teaching</b>  2 <b>of the specification, and that's what it's</b>  3 <b>intended for.</b>  4 Q But does the '802 patent identify any  5 type of test or procedure that someone could use  6 to determine whether their product  7 electrostatically inhibits harmful particulate  8 matter from infecting an individual through nasal  9 inhalation?  10 <b>A Again, the teaching is there in general,</b>  11 <b>but with no specific example.</b>  12 Q So there's no specific example or  13 explanation of any test that could be used to  14 determine whether something is electrostatically  15 inhibiting harmful particulate matter from  16 infecting an individual through nasal inhalation.  17 <b>A No such test is mentioned.</b>  18 Q Does the '802 patent mention any test  19 that can be used to determine whether a product  20 forms a thin film when applied to the skin or  21 tissue of nasal passages?  22 <b>A The specification teaches as much.</b>  23 Q And your position is that the  24 specification teaches that the formulations form a  25 thin film when applied to the skin. Correct?</p>	<p>67</p> <p>1 as Exhibit 33.  2 A/V TECHNICIAN: Stand by.  3 (Exhibit 33 marked for identification and  4 is attached to the transcript.)  5 MS. PETERSON: Maybe if you could scroll  6 down to the bottom of the page so we can look at  7 the entire first page. Yeah. Okay.  8 For the record, Exhibit 33 is a copy of  9 plaintiff's expert report of -- I'm sorry.  10 Mr. Haidri's responsive to -- let me start this  11 over again. I didn't want to mispronounce your  12 name.  13 Q Mr. Haidri, do you recognize Exhibit 33  14 as a copy of your responsive report that you  15 prepared in this matter involving BlueWillow?  16 <b>A Yeah, the first page, I recognize it.</b>  17 Q Thank you.  18 MS. PETERSON: And then let's move to  19 Page 87 of the PDF.  20 Q Mr. Haidri, is that your signature on the  21 final page of the report?  22 <b>A It is indeed.</b>  23 Q And the report was signed and executed on  24 August 12, 2022. Correct?  25 <b>A Yes, correct.</b></p>
<p>66</p> <p>1 <b>A Yes.</b>  2 Q My question is a little bit different.  3 Does the '802 patent mention any type of  4 test that can be used to determine whether a  5 product forms a thin film when applied to the skin  6 or tissue of nasal passages?  7 <b>A No test is mentioned.</b>  8 Q Does the '802 patent mention any type of  9 test that can be used to determine whether the  10 thin film electrostatically attracts particulate  11 matter?  12 <b>A No test is mentioned.</b>  13 Q Does the '802 patent mention any type of  14 test that can be used to determine whether the  15 thin film holds particulate matter in place?  16 <b>A No.</b>  17 Q Does the '802 patent mention any type of  18 test that can be used to determine whether the  19 formulation provides adequate impermeability to  20 the thin film?  21 <b>A No such test is mentioned.</b>  22 MS. PETERSON: Okay. We can take that  23 exhibit down.  24 I'd like to mark next a copy of  25 Mr. Haidri's responsive report. We'll mark this</p>	<p>68</p> <p>1 Q Now, Mr. Haidri, I did not see that you  2 prepared a separate list of materials that you  3 reviewed in forming your opinions.  4 Is that correct?  5 <b>A A glossary? No, there's no glossary.</b>  6 Q So would it be fair to say that the  7 materials and documents and information that you  8 considered in forming your opinions is all  9 mentioned specifically within the report itself?  10 <b>A Yeah, within its four corners.</b>  11 MS. PETERSON: Could we go back to Page 2  12 of the report, which I believe is at Page 10 of  13 the PDF.  14 Q And here on Page 2 of your report,  15 Mr. Haidri, you have a list of your findings and  16 conclusions. Correct?  17 <b>A Yes, that's correct.</b>  18 MR. KREMEN: Could you zoom in?  19 Mr. Haidri has eyesight problems.  20 THE WITNESS: Thank you.  21 <b>A Okay. Go ahead.</b>  22 Q So this list has a list of seven opinions  23 that you have formed. Correct?  24 <b>A All seven are not seen here. But, yes,</b>  25 <b>that is correct.</b></p>

October 28, 2022

<p>69</p> <p>1 Q And so specifically the opinions that you</p> <p>2 formed are that the Amiji report did not make a</p> <p>3 clear and convincing showing that Claims 1, 2, 6,</p> <p>4 and 7 are invalid for each of the grounds that are</p> <p>5 listed in Items 1 through 7. Correct?</p> <p>6 <b>A Yes, that is true.</b></p> <p>7 MS. PETERSON: Let's take a look at the</p> <p>8 next page, please.</p> <p>9 Q And here in Section III of your report</p> <p>10 you have laid out what you have identified as the</p> <p>11 Relevant Patent Statutes. Correct?</p> <p>12 <b>A That is correct.</b></p> <p>13 Q And these are the versions of 35 U.S.C.</p> <p>14 that you applied in forming your opinions.</p> <p>15 Correct?</p> <p>16 <b>A Yes.</b></p> <p>17 Q These are the versions of the patent</p> <p>18 statute known as the AIA version. Correct?</p> <p>19 <b>A That is correct.</b></p> <p>20 Q So you did not consider the pre-AIA</p> <p>21 version of 35 U.S.C. when forming your opinions.</p> <p>22 Correct?</p> <p>23 <b>A Correct. There was no substantial</b></p> <p>24 <b>change.</b></p> <p>25 MS. PETERSON: Let's go to the next page.</p>	<p>71</p> <p>1 Right?</p> <p>2 <b>A That is correct.</b></p> <p>3 Q And then in the next sentence you state,</p> <p>4 "Under a clear and convincing standard, it is a</p> <p>5 finding of fact that should be overturned only</p> <p>6 upon a finding that no reasonable examiner would</p> <p>7 have allowed the claims in light of the considered</p> <p>8 prior art."</p> <p>9 That's the standard that you applied in</p> <p>10 forming your opinions with respect to the Wahi</p> <p>11 patents?</p> <p>12 Is that right?</p> <p>13 <b>A That is right.</b></p> <p>14 Q I don't see that you've cited any case</p> <p>15 law or any other authority in support of that</p> <p>16 standard.</p> <p>17 Where did you obtain that standard from?</p> <p>18 <b>A But it follows underneath, as you can</b></p> <p>19 <b>see.</b></p> <p>20 Q So it's based on the Microsoft Supreme</p> <p>21 Court decision?</p> <p>22 <b>A If you scroll down you will see more.</b></p> <p>23 <b>But yes, Microsoft is the beginning.</b></p> <p>24 Q So that language, "no reasonable examiner</p> <p>25 would have allowed the claims," you're basing that</p>
<p>70</p> <p>1 Actually, I'm sorry, let's go to Section IV. So</p> <p>2 this is going to be Page 6 of your report, Page 14</p> <p>3 of the PDF.</p> <p>4 Q And here in Section IV, this is the</p> <p>5 beginning of some sections that contain the legal</p> <p>6 standards that you applied in forming your</p> <p>7 opinions. Correct?</p> <p>8 <b>A That is right.</b></p> <p>9 Q So specifically Section IV has several</p> <p>10 pages concerning the clear and convincing standard</p> <p>11 of proof. Right?</p> <p>12 <b>A That is correct.</b></p> <p>13 MS. PETERSON: And then let's move</p> <p>14 forward to Page 8 of the report. Yeah, that's</p> <p>15 good right there.</p> <p>16 Q Now, in the first paragraph on Page 8 of</p> <p>17 your report, there is a discussion about the Wahi</p> <p>18 references that were cited during prosecution of</p> <p>19 the '802 patent. Correct?</p> <p>20 <b>A Yes.</b></p> <p>21 Q And then looking at the second-to-last</p> <p>22 sentence of this paragraph, you state that, "These</p> <p>23 three references must be given special deference</p> <p>24 because they were considered by the USPTO prior to</p> <p>25 issuing a Notice of Allowance."</p>	<p>72</p> <p>1 on the Microsoft case?</p> <p>2 <b>A Literally the words of the Supreme Court,</b></p> <p>3 <b>yes.</b></p> <p>4 Q Now, throughout these sections describing</p> <p>5 the legal standards that you applied, you</p> <p>6 contained -- or included a number of citations to</p> <p>7 the MPEP. Correct?</p> <p>8 <b>A That is right.</b></p> <p>9 Q And that would be the Manual of Patent</p> <p>10 Examining Procedure that's used by the U.S. Patent</p> <p>11 and Trademark Office. Correct?</p> <p>12 <b>A That is correct.</b></p> <p>13 Q Why did you include citations, and why</p> <p>14 did you rely on the MPEP in forming your opinions?</p> <p>15 MR. KREMEN: Objection to the form of the</p> <p>16 question.</p> <p>17 <b>A Well, that is the guide for examiners to</b></p> <p>18 <b>follow in issuing patents.</b></p> <p>19 Q And is that the guide that a court or a</p> <p>20 jury follows when assessing the validity of a</p> <p>21 patent in litigation?</p> <p>22 <b>A It is entitled great deference under a</b></p> <p>23 <b>case that is not mentioned here, but you will</b></p> <p>24 <b>recall the name. It's called the Chevron</b></p> <p>25 <b>deference.</b></p>

October 28, 2022

<p>73</p> <p>1 Q But you understand that the MPEP is not</p> <p>2 binding on courts. Correct?</p> <p>3 A <b>True enough, except that the Chevron</b></p> <p>4 <b>deference applies, and the findings of an</b></p> <p>5 <b>administrative agency are not likely overturned.</b></p> <p>6 Q So that would apply -- what you're</p> <p>7 referring to as "Chevron deference," that would</p> <p>8 apply to the decisions of the examining agency.</p> <p>9 Correct?</p> <p>10 A <b>That is correct.</b></p> <p>11 Q But the specific requirements of the</p> <p>12 MPEP, those are not bound -- or the courts are not</p> <p>13 bound by those. Right?</p> <p>14 A <b>They're entitled to deference, but not</b></p> <p>15 <b>binding -- but not be binding.</b></p> <p>16 Q And throughout these sections on legal</p> <p>17 standards, do you feel like you have appropriately</p> <p>18 cited the applicable legal authority for all of</p> <p>19 the standards that you've provided in your report?</p> <p>20 A <b>Well, I'm satisfied that there is the</b></p> <p>21 <b>correct status of the law.</b></p> <p>22 MS. PETERSON: Let's move forward to Page</p> <p>23 9.</p> <p>24 Q And you'll see here in Section V, now we</p> <p>25 have a section titled Standards For Inquiry Into</p>	<p>75</p> <p>1 here?</p> <p>2 A <b>That is the language the PTO uses.</b></p> <p>3 Q Okay.</p> <p>4 A <b>Any time a claim is disallowed, they say</b></p> <p>5 <b>claims are rejected.</b></p> <p>6 Q So that's the term that's used when the</p> <p>7 USPTO determines that an application under</p> <p>8 examination does not satisfy its requirements for</p> <p>9 patentability?</p> <p>10 A <b>Broadly speaking, yes.</b></p> <p>11 MS. PETERSON: And then let's move</p> <p>12 forward another several pages to Page 23. Yeah.</p> <p>13 And we can focus there on the bottom.</p> <p>14 Q Here you have a section addressing</p> <p>15 secondary considerations, and specifically</p> <p>16 commercial success. Correct?</p> <p>17 A <b>That is correct.</b></p> <p>18 Q And this section sets out what you</p> <p>19 understand to be the controlling legal precedent</p> <p>20 with respect to secondary considerations?</p> <p>21 A <b>Yeah, more legal considerations. But</b></p> <p>22 <b>they first were enunciated by the Supreme Court in</b></p> <p>23 <b>Graham V John Deere. So the court of federal --</b></p> <p>24 <b>the CAFC is just repeating those considerations</b></p> <p>25 <b>from the Graham case.</b></p>
<p>74</p> <p>1 Patent Invalidity. Correct?</p> <p>2 A <b>Yes.</b></p> <p>3 Q And your first section is on Section 101?</p> <p>4 A <b>Yes, correct.</b></p> <p>5 MS. PETERSON: Let's take a look at the</p> <p>6 next page. If we can focus, maybe go down just a</p> <p>7 little bit more. That looks good.</p> <p>8 Q So here for Section 101, you've</p> <p>9 identified a two-step analysis. Correct?</p> <p>10 A <b>Yes.</b></p> <p>11 Q And I see again you have a section of the</p> <p>12 MPEP cited, Section 2106. Right?</p> <p>13 A <b>That is correct.</b></p> <p>14 Q Are those the PTO guidelines on subject</p> <p>15 matter eligibility?</p> <p>16 A <b>That is what I understand.</b></p> <p>17 Q And these are the standards that you</p> <p>18 applied in forming your opinions. Correct?</p> <p>19 A <b>Yes.</b></p> <p>20 MS. PETERSON: Okay. Let's move forward</p> <p>21 to Page 19 of the report. I think it's at Page 27</p> <p>22 of the PDF. Yeah.</p> <p>23 Q Here you have a Section D titled</p> <p>24 Rejections Based on Prior Art.</p> <p>25 Why did you use the word "rejections"</p>	<p>76</p> <p>1 Q And then if we go to the next page, I see</p> <p>2 you also have some references to requirements from</p> <p>3 the MPEP as well. Right?</p> <p>4 A <b>Yes.</b></p> <p>5 MS. PETERSON: Let's go -- let's scroll</p> <p>6 down to the bottom of this page.</p> <p>7 Q Section VI, this is a section that you</p> <p>8 have prepared addressing the person having</p> <p>9 ordinary skill in the art. Correct?</p> <p>10 A <b>That is correct.</b></p> <p>11 MS. PETERSON: Let's go to the next page.</p> <p>12 Q I see you have a case cited at the very</p> <p>13 top of this page. And we might need to go back up</p> <p>14 to the page before it.</p> <p>15 But this case that you cite that</p> <p>16 addresses the proposition that, An incorrect</p> <p>17 determination as to level of skill or an incorrect</p> <p>18 finding may constitute reversible error if it</p> <p>19 influences the ultimate conclusion on obviousness.</p> <p>20 Is that right?</p> <p>21 A <b>I see only that sentence, but ...</b></p> <p>22 Q But you see on the next page, there's a</p> <p>23 case citation to Custom Accessories?</p> <p>24 A <b>Let me read this, please.</b></p> <p>25 Q Yeah. Sure. Take your time.</p>

October 28, 2022

<p>77</p> <p>1 MR. KREMEN: Do you want to read above</p> <p>2 that?</p> <p>3 THE WITNESS: That's what I meant, is</p> <p>4 being given to me all the text.</p> <p>5 Q Yeah, if you need to move up and down,</p> <p>6 just let us know, we can do that.</p> <p>7 <b>A Okay. Now we are fine. So let me read</b></p> <p>8 <b>this. Because I didn't want to answer your</b></p> <p>9 <b>question out of context.</b></p> <p>10 Q Sure.</p> <p>11 <b>A All right. Very good. Please.</b></p> <p>12 Q So --</p> <p>13 <b>A Please repeat your question now.</b></p> <p>14 Q Sure. So the key citation to custom</p> <p>15 accessories, that's with respect to the statement</p> <p>16 that immediately precedes it about an incorrect</p> <p>17 determination as to the level of skill. Correct?</p> <p>18 <b>A That is correct, yes.</b></p> <p>19 MS. PETERSON: So I'd like to go down a</p> <p>20 little bit farther onto the next page. And,</p> <p>21 actually, can you -- yeah. Still at the top of</p> <p>22 the page, please. Yeah. That's great.</p> <p>23 <b>A Okay.</b></p> <p>24 Q So the case -- or, sorry, the next</p> <p>25 sentence here at the top of Page 25 says, "Care</p>	<p>79</p> <p>1 Q So that's your understanding of how the</p> <p>2 level of skill of a person of ordinary skill in</p> <p>3 the art should be set?</p> <p>4 <b>A Yes, it is my understanding, and I</b></p> <p>5 <b>believe it's generally the case.</b></p> <p>6 Q So a person of ordinary skill is going to</p> <p>7 be someone who can necessarily make and use the</p> <p>8 claimed invention without undue experimentation.</p> <p>9 <b>A Yes, correct.</b></p> <p>10 Q And that's based on the language of 35</p> <p>11 U.S.C. 112?</p> <p>12 <b>A 112 does not use the word "ordinary</b></p> <p>13 <b>skill," just "personal skill in the art." But</b></p> <p>14 <b>that is the usual understanding of the patent bar</b></p> <p>15 <b>of the judiciary.</b></p> <p>16 Q Could somebody be a person skilled in the</p> <p>17 art but still be unable to make the claimed</p> <p>18 invention without undue experimentation?</p> <p>19 MR. KREMEN: Objection to the form of the</p> <p>20 question.</p> <p>21 <b>A Again, there will be no straightforward</b></p> <p>22 <b>answer to your question. One or two individuals</b></p> <p>23 <b>may not be able to, but generally a person of</b></p> <p>24 <b>skill in the art should be able to.</b></p> <p>25 Q But you agree that there may be</p>
<p>78</p> <p>1 must be taken not to select a person of</p> <p>2 extraordinary skill."</p> <p>3 I don't see any case citation here.</p> <p>4 What is that based on?</p> <p>5 <b>A It's based on a general practice in</b></p> <p>6 <b>various judicial opinions about a person of</b></p> <p>7 <b>ordinary skill in the art. Explicitly mentioned</b></p> <p>8 <b>in Section 103 and implicitly in Section 112. So,</b></p> <p>9 <b>anyway, that's where you can form that kind of an</b></p> <p>10 <b>opinion with reasonable support in the statute and</b></p> <p>11 <b>case law.</b></p> <p>12 Q And what cases use that language,</p> <p>13 "extraordinary skill"?</p> <p>14 <b>A Well, there aren't any that I know of.</b></p> <p>15 Q Let's scroll down. If we could look at</p> <p>16 the -- actually, you don't need to scroll down.</p> <p>17 But I'd like to look at the next paragraph right</p> <p>18 here on the screen.</p> <p>19 Towards the bottom of that paragraph you</p> <p>20 state that, According to 112, he is the person who</p> <p>21 is able to make and use the claimed invention at</p> <p>22 the earliest filing date without undue</p> <p>23 experimentation.</p> <p>24 Do you see that?</p> <p>25 <b>A Yes, I do.</b></p>	<p>80</p> <p>1 circumstances where a person skilled in the art is</p> <p>2 not actually able to make and use the claimed</p> <p>3 invention without undue experimentation. Correct?</p> <p>4 MR. KREMEN: Objection to the form of the</p> <p>5 question.</p> <p>6 <b>A Such a person would exist, I'm sure,</b></p> <p>7 <b>statistically speaking, but that would be the</b></p> <p>8 <b>exception, not the rule.</b></p> <p>9 Q Well, would you agree with me that if the</p> <p>10 person skilled in the art is necessarily always</p> <p>11 able to make and use the claimed invention without</p> <p>12 undue experimentation, then we would never have</p> <p>13 any courts or juries finding patents invalid for</p> <p>14 lack of enablement?</p> <p>15 MR. KREMEN: Objection to form.</p> <p>16 <b>A Once again, I don't understand the</b></p> <p>17 <b>question. You have to repeat that slowly.</b></p> <p>18 Q That's okay, I can skip it.</p> <p>19 MS. PETERSON: Okay. Let's move ahead to</p> <p>20 Page 27. Actually, no, Page 26. And scroll down</p> <p>21 a little bit to the bottom.</p> <p>22 Q This Section B titled The Level of</p> <p>23 Ordinary Skill, this contains your opinions</p> <p>24 regarding the level of ordinary skill in the art.</p> <p>25 Correct?</p>

October 28, 2022

<p>81</p> <p>1 <b>A Correct.</b></p> <p>2 Q Did you discuss your understanding of the</p> <p>3 level of ordinary skill in the art with Dr. Lemmo</p> <p>4 while you were formulating your opinion?</p> <p>5 <b>A No, I did not consult Dr. Lemmo.</b></p> <p>6 Q And did Dr. Lemmo consult you at any</p> <p>7 point in time about the level of ordinary skill in</p> <p>8 the art as it applies to the '802 patent?</p> <p>9 <b>A No, not in the context of this</b></p> <p>10 <b>litigation.</b></p> <p>11 Q Did Dr. Lemmo consult you at any point in</p> <p>12 time, for example in the Matrixx litigation, about</p> <p>13 the level of ordinary skill in the art?</p> <p>14 <b>A Yeah, that possibly happened, but I don't</b></p> <p>15 <b>recall that.</b></p> <p>16 Q Okay.</p> <p>17 MS. PETERSON: I'm at a good breaking</p> <p>18 point. How about we go off the record now.</p> <p>19 THE WITNESS: Thank you. I was going to</p> <p>20 ask --</p> <p>21 VIDEO SPECIALIST: We are going off the</p> <p>22 record. The time is now 12:28 p.m.</p> <p>23 (A recess was taken.)</p> <p>24 VIDEO SPECIALIST: We're back on the</p> <p>25 record. The time is now 1:31 p.m.</p>	<p>83</p> <p>1 <b>there's an adhesive film, and benzalkonium</b></p> <p>2 <b>chloride also functions as a biocide.</b></p> <p>3 Q And is the actual formulation of</p> <p>4 NasalGuard -- which example -- sorry. Let me</p> <p>5 start over again.</p> <p>6 Which of the ten tables in the '802</p> <p>7 patent contains the formulation of NasalGuard, do</p> <p>8 you know?</p> <p>9 <b>A One of them does. I can't say which one.</b></p> <p>10 Q And does the '802 patent identify the</p> <p>11 exact percentage of the ingredients in NasalGuard?</p> <p>12 <b>A Every one of this table provides ranges.</b></p> <p>13 <b>None of them is an exact percentage of the active</b></p> <p>14 <b>ingredients.</b></p> <p>15 Q So none of the tables in the '802 patent</p> <p>16 specifically identify the precise percentages of</p> <p>17 the ingredients of NasalGuard. Correct?</p> <p>18 <b>A No, not an exact percentage. It's always</b></p> <p>19 <b>a range.</b></p> <p>20 Q And how do you know that the ingredients</p> <p>21 of NasalGuard are listed in one of the ten tables?</p> <p>22 <b>A I don't know that explicitly, but I've</b></p> <p>23 <b>been told that the product being currently</b></p> <p>24 <b>marketed does follow one of the examples.</b></p> <p>25 Q And who were you told that by?</p>
<p>82</p> <p>1 BY MS. PETERSON:</p> <p>2 Q Mr. Haidri, did you have any</p> <p>3 conversations with anyone during any of the breaks</p> <p>4 of today's deposition about the substance of your</p> <p>5 testimony?</p> <p>6 <b>A No, I did not.</b></p> <p>7 Q Okay. Thank you.</p> <p>8 MS. PETERSON: Let's go back to Mr.</p> <p>9 Haidri's expert report, Exhibit 33. And I'd like</p> <p>10 to go to Page 45 of the PDF. And if you could</p> <p>11 scroll down to the last paragraph, please. Great.</p> <p>12 Q Mr. Haidri, in the last paragraph on Page</p> <p>13 37 of your report I see you refer to a Trutek</p> <p>14 product that was initially named NasalGuard MAPB.</p> <p>15 Do you see that?</p> <p>16 <b>A Yes.</b></p> <p>17 Q And you state it was formulated based</p> <p>18 upon the example formulations shown in the</p> <p>19 specification of the '802 patent. Correct?</p> <p>20 <b>A Yes, that is right.</b></p> <p>21 Q What is the formulation of NasalGuard, do</p> <p>22 you know?</p> <p>23 <b>A Basically it contains the ingredients</b></p> <p>24 <b>mentioned in the ten examples of the '802 patent.</b></p> <p>25 <b>Most importantly, there's benzalkonium chloride,</b></p>	<p>84</p> <p>1 <b>A Mr. Kremen.</b></p> <p>2 Q I'd like to move forward in your report</p> <p>3 to Page 49. That's fine right there.</p> <p>4 So starting on Page 49 of your report,</p> <p>5 you have a section addressing written description.</p> <p>6 Correct?</p> <p>7 <b>A Enablement, yes.</b></p> <p>8 Q But I'm talking about this particular</p> <p>9 section.</p> <p>10 Is this Section D shown on Page 49</p> <p>11 related to written description?</p> <p>12 <b>A Yes. I see that.</b></p> <p>13 MS. PETERSON: And then let's move, let's</p> <p>14 scroll through this section until we get to Page</p> <p>15 51. And if we go down, yeah, to look at that</p> <p>16 paragraph right there, that's great.</p> <p>17 Q So in the second paragraph of Page 51, do</p> <p>18 you provide here in this paragraph an explanation</p> <p>19 of the applicable legal standard for written</p> <p>20 description?</p> <p>21 <b>A Let me read that.</b></p> <p>22 <b>All right. Go ahead.</b></p> <p>23 Q So on Page 51 of your report, you set out</p> <p>24 the legal standard that you applied for written</p> <p>25 description stating that the written description</p>

## Transcript of Amirali Y. Haidri, Esquire

22 (85 to 88)

October 28, 2022

<p>85</p> <p>1 requirement of 35 U.S.C. Section 112 (A) is that</p> <p>2 it must be complete enough as to enable a person</p> <p>3 of ordinary skill to make and use the invention.</p> <p>4 Correct?</p> <p>5 <b>A Yes.</b></p> <p>6 Q And then you go on to say, "It does not</p> <p>7 need to teach the prior art to those who are</p> <p>8 unfamiliar with it."</p> <p>9 Correct?</p> <p>10 <b>A That is correct.</b></p> <p>11 Q And so that's the standard that you</p> <p>12 applied in your written description analysis?</p> <p>13 <b>A Yes.</b></p> <p>14 Q And then you go on to refer to a clinical</p> <p>15 study that you attached as Exhibit D to your</p> <p>16 report. Correct?</p> <p>17 <b>A Yes.</b></p> <p>18 Q And did you rely on that clinical study</p> <p>19 report attached as Exhibit D as evidence of</p> <p>20 written description?</p> <p>21 <b>A Yes, you can say that.</b></p> <p>22 Q Now, nothing from that clinical study was</p> <p>23 described in the '802 patent. Correct?</p> <p>24 <b>A Yes.</b></p> <p>25 Q So yes, you agree with me that the '802</p>	<p>87</p> <p>1 Q So, Mr. Haidri, do you recognize Exhibit</p> <p>2 34 as a copy of the clinical study report that you</p> <p>3 attached to your expert report as Exhibit D?</p> <p>4 <b>A Yes, I do.</b></p> <p>5 MS. PETERSON: And if we could go back up</p> <p>6 to the second page of the report. One more page,</p> <p>7 then. There we go.</p> <p>8 Q So on Page 3 of the clinical study</p> <p>9 report, do you see there is an objective of the</p> <p>10 study that is provided?</p> <p>11 <b>A Yes.</b></p> <p>12 Q And the primary objective of the study</p> <p>13 was to evaluate the efficacy of MAPB nasal</p> <p>14 application gel in the prevention of the common</p> <p>15 cold and/or flu. Correct?</p> <p>16 <b>A That's what it says.</b></p> <p>17 MS. PETERSON: And then if we could go to</p> <p>18 the next page?</p> <p>19 Q And up here at the top you see there is a</p> <p>20 reference to Primary Endpoint?</p> <p>21 MR. KREMEN: Where is that?</p> <p>22 <b>A Yes.</b></p> <p>23 MR. KREMEN: I don't see it.</p> <p>24 THE WITNESS: It is the second box -- or</p> <p>25 the fourth.</p>
<p>86</p> <p>1 patent does not contain any reference or any</p> <p>2 information from that clinical study. Right?</p> <p>3 <b>A I agree.</b></p> <p>4 MS. PETERSON: Let's take this exhibit</p> <p>5 down. And I'd like to mark that clinical study</p> <p>6 report now. We'll mark that as Exhibit 34.</p> <p>7 A/V TECHNICIAN: Stand by.</p> <p>8 (Exhibit 34 marked for identification and</p> <p>9 is attached to the transcript.)</p> <p>10 MR. KREMEN: What exhibit is that to his</p> <p>11 report?</p> <p>12 MS. PETERSON: Exhibit D, as in dog.</p> <p>13 MR. KREMEN: Thank you.</p> <p>14 Q Okay. Mr. Haidri, do you recognize</p> <p>15 Exhibit 34 as a copy of the clinical study report</p> <p>16 that you had attached to your expert report as</p> <p>17 Exhibit D?</p> <p>18 <b>A That is the first page.</b></p> <p>19 Q Okay. And we can scroll through it if</p> <p>20 you need to confirm the rest of the pages that you</p> <p>21 attached.</p> <p>22 Would you like us to do that?</p> <p>23 <b>A Yes, please. Okay.</b></p> <p>24 MS. PETERSON: Can you scroll down</p> <p>25 through to the end, please.</p>	<p>88</p> <p>1 MR. KREMEN: Oh, okay. Got it.</p> <p>2 Q So the primary endpoint of this study was</p> <p>3 the percentage of subjects that were cold and/or</p> <p>4 flu-free in the treatment group at the end of the</p> <p>5 study as compared to the subjects who were cold</p> <p>6 and/or flu-free in the no-treatment group.</p> <p>7 Correct?</p> <p>8 <b>A Yes.</b></p> <p>9 Q Would you agree with me that that</p> <p>10 endpoint that's provided here in the clinical</p> <p>11 study report, that's a subjective determination?</p> <p>12 <b>A Subjective, can't quite agree. But, all</b></p> <p>13 <b>right. Overall, yes.</b></p> <p>14 Q Now, the clinical study only assessed</p> <p>15 whether the subjects had either the common cold or</p> <p>16 the flu at the end of the study. Right?</p> <p>17 <b>A Yes.</b></p> <p>18 Q The study did not evaluate the use of</p> <p>19 MAPB in any infections related to any other</p> <p>20 diseases. Correct?</p> <p>21 I'm sorry, did you respond?</p> <p>22 <b>A I said "correct."</b></p> <p>23 Q And is it also your opinion that this</p> <p>24 clinical study demonstrated that the ten</p> <p>25 formulations listed in the '802 patent work?</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM


October 28, 2022

<p>89</p> <p>1 <b>A It does show that, yes.</b></p> <p>2 Q Now, would you agree that the clinical</p> <p>3 study that we're looking at, it did not test</p> <p>4 whether NasalGuard electrostatically inhibits</p> <p>5 harmful particulate matter from infecting an</p> <p>6 individual?</p> <p>7 MR. KREMEN: Objection to form.</p> <p>8 <b>A I did not quite follow this question.</b></p> <p>9 <b>Where does electrostatic infection come in?</b></p> <p>10 Q Well, that's what I'm wondering.</p> <p>11 Did the clinical study test anything</p> <p>12 about the electrostatic attraction or</p> <p>13 electrostatic inhibition of NasalGuard?</p> <p>14 <b>A I don't think it's mentioned by name.</b></p> <p>15 Q Did the clinical study test whether</p> <p>16 NasalGuard forms a thin film when applied to the</p> <p>17 skin or tissue of nasal passages?</p> <p>18 <b>A Is that a complete question? Can you</b></p> <p>19 <b>please repeat that?</b></p> <p>20 Q Is there anything in the clinical study</p> <p>21 report indicating that the investigators tested</p> <p>22 whether NasalGuard forms a thin film when applied</p> <p>23 to the skin or tissue of nasal passages?</p> <p>24 <b>A No, no such thing is mentioned.</b></p> <p>25 Q Is there anything in the clinical study</p>	<p>91</p> <p>1 report down. And let's go back to Mr. Haidri's</p> <p>2 expert report, Exhibit 33.</p> <p>3 And let me get you a page number.</p> <p>4 I'd like to go to Page 78 of his report,</p> <p>5 which is maybe Page 86 of the document, 86 of the</p> <p>6 PDF. And if you could scroll down a little bit.</p> <p>7 That looks good.</p> <p>8 Q In the second paragraph on Page 78 of</p> <p>9 your report you state that, Since 2012,</p> <p>10 approximately 7 million tubes of the '802 patented</p> <p>11 products have been sold worldwide.</p> <p>12 Do you see that sentence?</p> <p>13 <b>A Yes.</b></p> <p>14 Q What products specifically are you</p> <p>15 referring to?</p> <p>16 <b>A The NasalGuard product.</b></p> <p>17 Q So that 7 million tubes refers to sales</p> <p>18 of all NasalGuard products?</p> <p>19 <b>A I will think so, or say so.</b></p> <p>20 Q And where did you obtain that 7 million</p> <p>21 number from?</p> <p>22 <b>A From Mr. Kremen.</b></p> <p>23 Q And if you could look a few sentences</p> <p>24 down in that same paragraph, do you see a sentence</p> <p>25 that starts with the word "satisfaction"?</p>
<p>90</p> <p>1 report indicating that the investigators tested</p> <p>2 whether a thin film electrostatically attracts</p> <p>3 particulate matter?</p> <p>4 <b>A It could have done, but the investigators</b></p> <p>5 <b>don't say so.</b></p> <p>6 Q So you don't see anything along those</p> <p>7 lines mentioned in the report. Correct?</p> <p>8 <b>A Not mentioned by name or explicitly.</b></p> <p>9 Q Is there anything in the clinical study</p> <p>10 report indicating that the investigators tested</p> <p>11 whether a thin film holds the particulate matter</p> <p>12 in place?</p> <p>13 <b>A No. Subject to my qualification, the</b></p> <p>14 <b>answer is no.</b></p> <p>15 Q So there's no express reference to</p> <p>16 whether the investigators tested whether a thin</p> <p>17 film holds the particulate matter in place?</p> <p>18 <b>A Agreed.</b></p> <p>19 Q So in other words, the clinical study</p> <p>20 report showed that fewer people in the treatment</p> <p>21 group had the cold or flu at the end of the study,</p> <p>22 but there's no discussion of why that was the</p> <p>23 case.</p> <p>24 <b>A No discussion, that is right.</b></p> <p>25 MS. PETERSON: Okay. We can take that</p>	<p>92</p> <p>1 <b>A Yes.</b></p> <p>2 Q So you state in your report that,</p> <p>3 "Satisfaction is necessarily based on the ability</p> <p>4 of the product to inhibit harmful particles from</p> <p>5 infecting the purchaser through nasal inhalation."</p> <p>6 Correct?</p> <p>7 <b>A Yes.</b></p> <p>8 Q What did you do to analyze whether</p> <p>9 purchasers' satisfaction with NasalGuard was the</p> <p>10 result of the ability of the product to inhibit</p> <p>11 harmful particles from infecting the purchaser</p> <p>12 through nasal inhalation?</p> <p>13 <b>A From the large number of sales, which</b></p> <p>14 <b>also implies repeat sales, repeat use by</b></p> <p>15 <b>consumers, and the absence of any complaints.</b></p> <p>16 Q Did you consider whether any customer</p> <p>17 satisfaction could be attributed to some other</p> <p>18 feature of the product?</p> <p>19 <b>A No consumer dissatisfaction has been</b></p> <p>20 <b>brought to my attention.</b></p> <p>21 Q No. I was asking you something a little</p> <p>22 bit different. Did you consider whether that</p> <p>23 customer satisfaction you're referring to, whether</p> <p>24 it could be attributed to some other feature of</p> <p>25 NasalGuard?</p>

## Transcript of Amirali Y. Haidri, Esquire

24 (93 to 96)

October 28, 2022

<p>93</p> <p>1 A Well, I did not consider them, but I</p> <p>2 don't think it's particularly relevant.</p> <p>3 Q Why not?</p> <p>4 A Because there is only one function of</p> <p>5 this product and, obviously, the users are</p> <p>6 satisfied with it.</p> <p>7 Q Is the product also intended to reduce</p> <p>8 the effects of seasonal allergies?</p> <p>9 A As long as it contain negatively charge</p> <p>10 harmful particles, yes.</p> <p>11 Q And would you consider allergies caused</p> <p>12 by pollen to be an infection?</p> <p>13 A It is not an infection, but it can cause</p> <p>14 an allergy.</p> <p>15 Q Did you consider whether any other</p> <p>16 attributes, for example the ability of the product</p> <p>17 to moisturize the skin?</p> <p>18 A No, I did not.</p> <p>19 MS. PETERSON: Okay. Well, Mr. Haidri,</p> <p>20 thank you so much for your time today. I actually</p> <p>21 don't have any other questions for you.</p> <p>22 MR. KREMEN: Oh, okay.</p> <p>23 THE WITNESS: Okay. Are we done?</p> <p>24 MR. KREMEN: I don't have any others</p> <p>25 either.</p>	<p>95</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2 I, AMIRALI Y. HAIDRI, ESQUIRE, do hereby</p> <p>3 acknowledge that I have read and examined the</p> <p>4 foregoing testimony, and the same is a true,</p> <p>5 correct and complete transcription of the</p> <p>6 testimony given by me, and any corrections appear</p> <p>7 on the attached Errata sheet signed by me.</p> <p>8</p> <p>9 _____</p> <p>10 (DATE) (SIGNATURE)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>94</p> <p>1 MS. PETERSON: Okay. So I think we're</p> <p>2 done. We can go off the record.</p> <p>3 THE WITNESS: Thank you.</p> <p>4 VIDEO SPECIALIST: All right. Just a</p> <p>5 moment, please.</p> <p>6 This marks the end of the deposition of</p> <p>7 Amirali Haidri. We are going off the record. The</p> <p>8 time is now 1:54 p.m.</p> <p>9 COURT REPORTER: Mr. Kremen, do you need</p> <p>10 a copy of the transcript?</p> <p>11 MR. KREMEN: Yeah, I do. But in the</p> <p>12 regular course of -- I don't need an expedited</p> <p>13 copy. So but, yes, I do need a copy.</p> <p>14 (Off the record at 1:54 p.m. EDT.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>96</p> <p>1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC</p> <p>2 I, Debra A. Whitehead, the officer before whom the</p> <p>3 foregoing proceedings were taken, do hereby certify</p> <p>4 that the foregoing transcript is a true and correct</p> <p>5 record of the proceedings; that said proceedings</p> <p>6 were taken by me stenographically and thereafter</p> <p>7 reduced to typewriting under my supervision; that</p> <p>8 reading and signing was not requested; and that I am</p> <p>9 neither counsel for, related to, nor employed by any</p> <p>10 of the parties to this case and have no interest,</p> <p>11 financial or otherwise, in its outcome.</p> <p>12 IN WITNESS WHEREOF, I have hereunto set my hand and</p> <p>13 affixed my notarial seal this 7th day of November,</p> <p>14 2022.</p> <p>15</p> <p>16 My commission expires:</p> <p>17 April 30, 2023</p> <p>18</p> <p>19</p> <p>20 </p> <p>21 _____</p> <p>22 E-NOTARY PUBLIC IN AND FOR THE</p> <p>23 STATE OF MARYLAND</p> <p>24</p> <p>25</p>

PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM